

PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Judiciary & Rules Committee
67th Idaho Legislature
Second Regular Session – 2024**



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2024

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2024 Legislative Session

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02 – Rules and Standards for Secure Juvenile Detention Centers

Docket No. 05-0102-2301 (ZBR Chapter Repeal)3

05.01.04 – Uniform Standards for Juvenile Probation Services

Docket No. 05-0104-2301 (ZBR Chapter Rewrite).....5

05.02.01 – Rules for Residential Treatment Providers

Docket No. 05-0201-2301 (ZBR Chapter Repeal)60

IDAPA 11 – IDAHO STATE POLICE

11.07.01 – Rules Governing Motor Vehicles – General Rules

Docket No. 11-0701-2301 (ZBR Chapter Rewrite).....62

11.07.03 – Rules Governing Emergency Vehicles/Authorized Emergency Vehicles

Docket No. 11-0703-2301 (ZBR Chapter Rewrite).....69

11.10.01 – Rules Governing Idaho Public Safety and Security Information System

Docket No. 11-1001-2301 (Fee Rule)77

IDAPA 21 – DIVISION OF VETERANS SERVICES

21.01.04 – Rules Governing Idaho State Veterans Cemeteries

Docket No. 21-0104-230182

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE

50.01.01 – Rules of the Commission of Pardons and Parole

Docket No. 50-0101-2301 (ZBR Chapter Rewrite).....87

IDAPA 62 – OFFICE OF ADMINISTRATIVE HEARINGS

62.01.01 – Idaho Rules of Administrative Procedure

Docket No. 62-0101-2301 (New Chapter)128

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS
05.01.02 – RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS
DOCKET NO. 05-0102-2301 (ZBR CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-504(3), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule is adopted in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing chapter 05.01.02 and intends to incorporate standards for county juvenile detention centers in the chapter rewrite under ZBR companion docket 05-0104-2301. The department held collaborative meetings with county partners to develop updates to both sets of standards and held two hearings.

IDAPA 05.01.02 IS BEING REPEALED IN ITS ENTIRETY. The notice of proposed rulemaking was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 169 through 170](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the state General Fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Estela Cabrera at (208) 577-5451.

DATED this 3rd of January, 2024.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0285
Phone: 208.334.5100
Fax: 208.334.5120

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 20-504(3), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 25, 2023, at 2:00 p.m. MT

954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting
Meeting URL <https://bluejeans.com/975592637/9404>
Meeting ID 975 592 637
Participant Passcode 9404

E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing this chapter and intends to incorporate standards for county juvenile detention centers in the chapter rewrite under ZBR companion docket 05-0104-2301. The department held collaborative meetings with county partners to develop updates to both sets of standards.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A.

FISCAL IMPACT: There is no negative fiscal impact on the state general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Volume 23-6, pages 35-36](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Estela Cabrera at (208) 577-5451.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 4th day of October, 2023.

IDAPA 05.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.04 – UNIFORM STANDARDS FOR JUVENILE PROBATION SERVICES

DOCKET NO. 05-0104-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-504(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing chapter 05.01.02 and this rule consolidates the standards for county juvenile detention centers and county juvenile probation departments into one chapter as well as updates the standards. Subchapter B of the rule incorporates content previously held in chapter 05.01.02. Definitions previously in 05.01.02 were also added. Collaborative meetings were held with county partners to develop updates to both sets of standards that form this rule and two hearings were held.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 171 - 198](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the state General Fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Estela Cabrera at (208) 577-5451.

DATED this 3rd of January, 2024.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0285
Phone: 208.334.5100
Fax: 208.334.5120

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 20-504(10), 20-504(12) and 20-504(15), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

<p>Wednesday, October 25, 2023, at 2:00 p.m. MT</p> <p>954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting Meeting URL https://bluejeans.com/975592637/9404 Meeting ID 975 592 637 Participant Passcode 9404</p> <p>E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance</p>

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department intends to repeal chapter 05.01.02 and this rule consolidates the standards for county detention centers and county probation departments into one chapter as well as updates the standards. Subchapter B of the rule incorporates content previously held in chapter 05.01.02. Definitions previously in 05.01.02 were also added. Collaborative meetings were held with county partners to develop updates to both sets of standards that form this rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no negative fiscal impact on the state general fund, as this rulemaking does not implement changes to existing probation department or detention center operations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Volume 23-4, pages 12-13](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Estela Cabrera at (208) 577-5451.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 05-0104-2301

05.01.04 – RULES GOVERNING COUNTY JUVENILE PROBATION AND DETENTION SERVICES

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, Idaho Code. ()

001. SCOPE.

These rules ensure that all county juvenile probation departments and county juvenile detention centers operate under consistent standards based on the principles of accountability, community protection, and competency development with oversight by the Department. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – RULES FOR JUVENILE PROBATION DEPARTMENTS

110. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the definition in Section 110 apply to the interpretation and enforcement of Subchapter A only: ()

01. Balanced Approach. An approach to juvenile justice that gives balanced attention to holding offenders accountable, developing competencies, and protecting the community. ()

02. Case Management Plan. A plan developed in collaboration with those directly involved in a juvenile's case to address criminogenic risk factors and identified needs. ()

03. Evidence-Based Practices. Practices that are demonstrated to be effective through empirical research. ()

04. Graduated Responses. A system of graduated incentives and sanctions to respond to juvenile offender's behavior. ()

05. Juvenile Probation Department. Any public or private agency, made up of one (1) or more staff, administered by or contracted with the court or county to provide juvenile probation and supervision services to a county at the expense and concurrence of the county commissioners. ()

06. Juvenile Probation Officer. An employee, who is POST-certified or working towards POST certification, of a juvenile probation department responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. ()

07. Probation. A legal status created by a court order that permits a juvenile offender to remain in the community with conditions and restrictions imposed by the court. ()

08. Recidivism. A measure of juvenile offenders who are adjudicated of a new misdemeanor or felony offense within a specified time period. ()

111. – 119. (RESERVED)

120. REVIEW PROVISIONS.

The Department will collaborate with the courts and the counties to visit and review all juvenile probation departments to assess compliance with these rules. ()

01. Frequency. Each juvenile probation department should be reviewed triennially. ()

02. Review of Records and Staff. All case files and related documents, policy and procedures manuals, and training records should be available for review excluding personnel records and personnel action reports. Review team members may privately interview juvenile offenders, parents/guardians of juvenile offenders, and staff concerning any matter pertaining to these standards. ()

03. Consultation with Judges. Judges assigned to preside over juvenile cases in the county should be contacted for information related to compliance with the standards. ()

121. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile probation departments shall conform to applicable laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such probation department is located. ()

122. WRITTEN REPORT.

The Department prepares a written report of each review within ninety (90) days following such review that is provided to the appropriate juvenile probation administrator with copies to the county commissioners and the judges presiding over juvenile cases. ()

123. – 129. (RESERVED)

130. ADMINISTRATION.

01. Mission Statement. Juvenile probation departments should have a department mission statement that incorporates the principles of the balanced approach and guides the operations of the department. ()

02. Policies and Procedures. Juvenile probation departments will have policies and procedures for the operation of the department that are consistent with existing laws, local rules, and evidence-based practices. All written policies, procedures, and rules and regulations should be dated, reviewed at least annually, and made available to department employees. Policies will include administrative procedures for the following: ()

a. Roles of employees and organizational authority within the department; ()

b. Communication and dissemination of pertinent information to staff; ()

c. Records management in accordance with Idaho Court Administrative Rule 32; and ()

d. Internal case review to ensure the quality of supervision and compliance with standards. ()

03. Data. Juvenile probation departments should have policies and procedures to collect and analyze data on at least an annual basis that allows for an analysis of local trends in juvenile justice, measures recidivism, and evaluates any other identified department objectives. ()

131. – 139. (RESERVED)

140. STAFF QUALIFICATIONS AND STAFF DEVELOPMENT.

All juvenile probation departments will have written policy and procedures governing staffing, to include: ()

01. Minimum Qualifications: ()

a. Juvenile probation officers should meet and maintain the minimum standards of employment as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

b. Juvenile probation officers should adhere to the Code of Ethics/Standards of Conduct as provided in IDAPA 11.11.01. ()

02. Training and Staff Development: ()

a. All juvenile probation officers will earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. ()

b. Juvenile probation departments should ensure staff training based on their written policy and procedures. The training should meet staff needs, be reviewed regularly, and address current trends. ()

c. Juvenile probation officers should obtain at least twenty (20) hours of continuing education each year after certification as a juvenile probation officer. At least six (6) hours of annual continuing education should be on evidence-based/best practices in juvenile justice. ()

d. Each juvenile probation department will maintain accurate documentation of continued training hours for each juvenile probation officer. ()

141. – 149. (RESERVED)

150. JUVENILE PROBATION SERVICES.

All juvenile probation departments will have policies and procedures regarding the following: ()

01. Balanced Approach Model. Supervision of juvenile offenders and services provided to juvenile offenders and their families should be based on the Balanced Approach Model. ()

02. Engaging and Involving Families. Juvenile probation officers should document efforts to engage and involve a juvenile offender’s family and/or other supportive individuals. ()

03. Validated Risk Assessment. A validated risk assessment should be utilized to determine the criminogenic risk factors and needs of the juvenile offender, assist in making recommendations to the court, and in developing individualized case plans to include length of probation and to determine level and type of supervision, frequency of contact, and intensity of services. ()

04. Assessments. Assessments by other qualified providers should be utilized when applicable to assist in making recommendations to the Court and in developing individualized case plans. ()

05. Case Management Plans. Individualized case management plans focus on the most significant criminogenic risks as identified by the risk assessment and supplemental assessments. The plan prioritizes and addresses moderate or higher criminogenic risks, needs, and other individual factors. Case management plans are reviewed with the juvenile and/or their parent/guardian and updated, as needed, per department policy. ()

06. Collateral Contacts. Juvenile probation officers should conduct collateral contacts and verify information about juvenile offenders that is important to the supervision process. ()

07. Documentation. Juvenile probation officers should maintain timely and accurate records of each juvenile offender under supervision, consistent with probation department policies. ()

08. Evidence Based/Best Practices and Programs. Evidence-based/best practices and programs should be utilized to promote a greater likelihood of positive outcomes. ()

09. Collaboration with Community Partners. Juvenile probation officers should collaborate with public and private agencies to assist juveniles and their families to obtain services and utilize community resources. These partners may include, but are not limited to, treatment providers, employment agencies, law enforcement,

school systems, and other government and non-profit organizations. ()

10. Court Reports. Reports should provide the Court pertinent information as well as sufficient detail regarding the risks and needs of the juvenile. ()

a. Any recommendations contained in reports should be based on the Balanced Approach Model. Recommendations should address the risk and needs of the juvenile and the juvenile’s family including supervision, treatment, and any other special conditions. ()

b. Information in reports should be verified to ensure accuracy and credibility of the information. ()

c. Juvenile probation departments should have procedures to review and approve reports to ensure quality control and consistency. ()

d. All reports should be filed in a timely manner as determined by the Court and department policies. ()

11. Use of Detention for Status Offenders. Detention placement for status offenses should not be used unless court ordered by a judge pursuant to Idaho Juvenile Rule 17(e). Discretionary detention time is not imposed for status offenses. ()

12. Physical Intervention. Policies regarding physical interventions should include direction on allowable interventions, training required, the use of chemical agents or other weapons, and documentation of any physical force used. ()

13. Reporting of Abuse/Neglect. Physical and sexual abuse and neglect must be reported and documented in accordance with Section 16-1605, Idaho Code. ()

14. Transfer of Cases. Transfer of cases should occur in accordance with chapter 5, Title 20, Idaho Code, and Idaho Juvenile Rule 10. ()

a. Juvenile probation officers should communicate with the county where a juvenile will reside regardless of whether or not supervision will be requested. Such communication should occur as soon as a change in residence is determined. ()

b. The juvenile probation department in the sending county should communicate, in writing, to the juvenile probation department in the receiving county regarding the supervision request. Information provided should include juvenile and guardian name, address, phone, school (if known), criminal history, disposition and terms, and conditions of supervision. ()

c. In the event a juvenile is relocating to or from another state, the juvenile probation officer should comply with the provisions of the Interstate Compact for Juveniles, Chapter 19, Title 16, Idaho Code. ()

15. Absconders. Reasonable steps should be taken to locate juvenile offenders who fail to report for probation supervision and whose whereabouts are unknown. ()

16. Transportation of Juveniles. All juvenile probation officers who transport a juvenile will have a valid driver’s license in good standing and valid proof of insurance. ()

17. Release of Information. Information contained in probation files is confidential and may only be released in accordance with Idaho Court Administrative Rule 32 and state and federal laws. Written policy and procedures should include what information can be provided, who should provide the information, and how it should be provided. ()

18. Additional Policy and Procedures. Juvenile probation departments will establish written policy and procedures in accordance with their county policies regarding the following (if applicable): ()

- a. Diversions; ()
- b. Victim and community restoration; ()
- c. Search and seizure; ()
- d. Drug testing; ()
- e. Graduated responses; ()
- f. Probation violations; ()
- g. Use of detention; and ()
- h. Termination of cases. ()

151. -- 209. (RESERVED)

SUBCHAPTER B – RULES FOR JUVENILE DETENTION CENTERS

210. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the definitions in Section 210 apply to the interpretation and enforcement of Subchapter B only. ()

01. Body Cavity Search. The manual internal examination into the rectal or vaginal cavities to detect contraband, performed only by a medical authority. ()

02. Chemical Agent. An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. ()

03. Classification. A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. ()

04. Contact Visitation. A program that permits juvenile offenders to visit with designated person(s) in an area free of obstacles or barriers that prohibit physical contact. ()

05. Contraband. Any item not issued or authorized by the detention center. ()

06. Corporal or Unusual Punishment. Any act of inflicting punishment directly on the body, causing pain or injury. ()

07. Day Room/Multi-Purpose Room. That portion of the housing unit used for varied juvenile offender activities that is separate and distinct from the sleeping rooms. ()

08. Detention Center. A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. ()

09. Detention Records. Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, headcounts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. ()

10. Direct Care Staff. Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. ()

11. **Electroshock Device.** A device which delivers an electric shock designed to temporarily disrupt muscle function. ()
12. **Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. ()
13. **Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. ()
14. **Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. ()
15. **Health-Trained Employee.** A person who operates within the limits of any license or certification to aid a physician, nurse, physician's assistant, or other professional medical staff ()
16. **Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. ()
17. **Incident Report.** A written document reporting any occurrence or event, or an incident which threatens the safety and security of direct care staff, juvenile offenders, or others, or which threatens the security of the program and which requires a staff response. ()
18. **Juvenile Detention Officer.** Responsible for the safety, care, protection, and monitoring of juvenile offenders. ()
19. **Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. ()
20. **Mechanical Restraints.** Devices used to restrict physical activity. ()
21. **Medical Personnel.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. ()
22. **Medical Records.** Records maintained by the health authority, to include medical examinations, diagnoses, and any medical care provided. ()
23. **Medical Screening.** A system of structured observation and initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. ()
24. **Pat Search.** The running of the hands over the clothed body of a juvenile by an employee to determine whether the individual possesses contraband. ()
25. **Perimeter Security Check.** Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breaches. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas, as designated by detention center policy and procedures. ()
26. **Petition for Exemption.** A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. ()
27. **Physical Intervention.** Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. ()

28. Prison Rape Elimination Act of 2003 (PREA). Public Law No. 108-79, including all subsequent amendments thereto as codified in 34 U.S.C. §§ 30301-30309, and all federal rules and standards promulgated thereunder, which promote zero (0) tolerance of sexual abuse of juvenile offenders by staff or by other juvenile offenders. ()

29. Rated Capacity. The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. ()

30. Renovation. The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. ()

31. Rule Infraction. A violation of detention center rules of conduct or policy and procedures, as governed by detention center policy and procedures. ()

32. Safety Equipment. Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. ()

33. Security Devices. Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. ()

34. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. ()

35. Strip Search. A search that requires a juvenile to remove or arrange some or all clothing so as to permit a visual inspection of the juvenile's breasts, buttocks, or genitalia. ()

36. Volunteer. A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for their services or time. Volunteers will not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. ()

211. -- 219. (RESERVED)

220. INSPECTION PROVISIONS.

The Department or its designee has the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. ()

01. Annual Visits. Each juvenile detention center is subject to announced or unannounced visits by Department representatives on at least an annual basis. ()

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports will be available for review excluding medical records, personnel records and personnel action reports. Department representatives will be allowed to observe and privately interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives will have access to all parts of the detention center for the purpose of inspecting the physical plant. ()

221. DEPARTMENT PREPARED WRITTEN REPORT OR THEIR AGENTS.

Department representatives will prepare a written report of each inspection within ninety (90) days following such inspection and provide copies to the appropriate detention center administrator and the governing body. The report is

submitted to the Director for review of the issuance or renewal of a certificate of compliance. ()

222. COMPLIANCE WITH STANDARDS ENFORCED.

Upon completion of an inspection, the Department will send notice of such compliance or noncompliance to the detention center administrator, governing body responsible for the detention center, and Idaho County Risk Management Program, where applicable. ()

01. Development of a Plan of Corrective Action. Upon receipt of a notice of noncompliance from the Department, the detention center administrator and governing body shall develop a plan of corrective action to correct the deficiencies cited in the report. The plan will include a description of the nature of noncompliance for each standard cited, the steps to be taken to correct the deficiency, and a projected completion date. Inspection representatives will be available to advise and consult concerning an appropriate corrective action. The plan is submitted to the Department for approval no later than sixty (60) days from receipt of notice. ()

02. Demonstration of Meaningful Progress Toward Achieving Compliance. Meaningful progress toward achieving compliance, according to the submitted plan, demonstrated during the time frame approved by the Department in the corrective action plan. ()

223. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile detention centers shall conform to laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such detention center is located including, but not limited to, all applicable public health, safety, fire codes, building regulations, and interstate compact regulations. ()

224. STANDARDS COMMITTEE.

A standards committee will be created for the purpose of reviewing the standards, petitions for exemption from standards, and requests for modification of standards. The committee will be comprised of county juvenile detention administrators or their designees, and representative(s) from the Department. The committee should strive for regional representation when possible. The final appointment of all Standards Committee members is made by the Director. ()

01. Terms. Committee members serve terms of two (2) years starting on October 1 of the year in which the member is nominated and approved. ()

02. Abstain from Voting. If a petition for exemption or request for modification is initiated from the same district as a Committee representative, that Committee representative will abstain from voting and the alternate will serve in place of said representative. ()

03. Standards Committee Meetings. The Standards Committee will meet at least biennially to review the Juvenile Detention Center Standards, requests for modification of standards, or petitions for exemptions. The Standards Committee will also meet when the Director determines that a special meeting is necessary to review the juvenile detention center standards, requests for modification of standards, or petitions for exemptions. ()

04. Requests for Modification of Standards. In the event a standard becomes obsolete or unworkable, a request for modification may be filed with the Director. The request is submitted by the juvenile detention administrators of the Idaho Association of County Juvenile Justice Administrators. The Director makes determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. If convened, the Standards Committee reviews the request and submits its written recommendations to the Director. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. ()

05. Modification of Standards by the Standards Committee. In the event that the Standards Committee determines that a standard is obsolete, unworkable, unclear, or otherwise unreasonable, the committee may submit written recommendations to the Director for changes to the standards, along with explanations regarding the reasons for the requested changes. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. Any modification of the standards must be promulgated as rules in accordance with the Idaho Administrative Procedures Act. ()

225. -- 229. (RESERVED)

230. DETENTION CENTER ADMINISTRATION.

01. Legal Entity. The public or private agency operating a detention center is a legal entity, part of a legal entity, or a political subdivision. ()

02. Governing Body. Governing body means any public or private entity established or delegated as a source of legislative or administrative authority to provide the fiscal needs of the detention center administrator so that he may carry out the provisions of these rules. ()

03. Detention Center Administrator. The detention center will have a designated administrator who is responsible for all detention center operations. ()

04. Mission Statement. The detention center will have a written mission statement which describes its philosophy and goals. ()

05. Policy and Procedures. The detention center administrator will develop and maintain written policy and procedures which safeguard the basic rights of juvenile offenders and safeguard the juvenile offenders' freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policies and procedures are reviewed on a regular basis, updated as needed and made available to all detention center employees. The policy and procedures manual is submitted to the prosecuting attorney, or other legal authority, for review, and to county commissioners, or other governing authority, for approval. After such approval, a copy of the policy and procedures manual is submitted to the Department. ()

231. -- 239. (RESERVED)

240. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center must be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. ()

02. Staffing. The detention center will have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center will have policies and procedures in place governing staffing and submit a staffing plan to the Department as requested. It is recommended that each secure juvenile facility maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which need full documentation. ()

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. ()

b. If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. ()

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. During the admission process, an employee of the same gender as the juvenile offender should be present. ()

04. Minimum Qualifications. ()

a. Direct care staff, at the time of employment, must meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and

Training Council.” ()

b. Volunteers, before starting volunteer services, must meet the minimum criminal history background requirements as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

c. The agency will conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. ()

05. Training and Staff Development Plan. Each juvenile detention center will develop a staff training and development plan based on the policies and procedures of the detention center. The plan will also ensure that all full-time juvenile detention officers earn the juvenile detention officer certificate, as mandated in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

a. All new full-time direct care staff are provided training that addresses areas including, but not limited to: ()

i. First aid/CPR; ()

ii. Security procedures; ()

iii. Supervision of juvenile offenders; ()

iv. Suicide prevention; ()

v. Fire and emergency procedures; ()

vi. Safety procedures; ()

vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer use of force lesson plan; ()

viii. Report writing; ()

ix. Juvenile offender rules of conduct; ()

x. Rights and responsibilities of juvenile offenders; ()

xi. Key control; ()

xii. Interpersonal relations; ()

xiii. Social/cultural lifestyles of the juvenile population; ()

xiv. Communication skills; ()

xv. Mandatory reporting laws and procedures; ()

xvi. Professional boundaries; and ()

xvii. All training as outlined in section 115.331 of the PREA Standards. ()

b. All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week will obtain a part-time juvenile detention officer certification, as mandated by IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()

c. Any staff who works in a facility classified as Rural Exception or a collocated facility will obtain a part-time juvenile detention officer certificate of completion from the Department. ()

d. Ongoing training is provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which include, but are not limited to: ()

i. At least eight (8) hours of use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer lesson plan; and ()

ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and ()

iii. All other trainings that require recertification. ()

e. Volunteers and contractors are trained commensurate to their level of contact with juvenile offenders. ()

f. Each facility maintains accurate training documentation. ()

241. -- 249. (RESERVED)

250. DETENTION CENTER INFORMATION SYSTEMS.

01. Records. The detention center will have written policies and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center. Written policy and procedures will address, at a minimum, the following: ()

a. Accuracy of information, including procedures for verification; ()

b. Security of information, including access and protection from unauthorized disclosure; ()

c. Content of records; ()

d. Maintenance of records; ()

e. Length of retention; and ()

f. Method of storage or disposal of inactive records. ()

02. Release of Information. Prior to the release of information to agencies other than criminal justice authorities or other agencies with a court order for access, a written release of information is obtained from the juvenile offender's parent, legal guardian or through a court order with a copy of that release placed in the juvenile offender's file folder. ()

03. Access to Records. Parents, legal guardians, legal representatives, and staff is permitted access to information in the juvenile offender's files and records, as authorized by law. Absent a court order to the contrary, the detention center administrator may restrict access to certain information, or provide a summary of the information when its disclosure presents a threat to the safety and security of the detention center or may be detrimental to the best interests of the juvenile offender. If access to records is denied or restricted, documentation that states the reason for the denial or restriction is maintained by the detention center administrator. ()

251. DOCUMENTATION.

01. Shift Log. The detention center maintains documentation including time notations on each shift which includes the following information, at a minimum: ()

a. Direct care staff on duty; ()

- b. Time and results of security or well-being checks and head counts; ()
 - c. Names of juvenile offenders received or discharged with times recorded; ()
 - d. Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; ()
 - e. Time of meals served; ()
 - f. Times and shift activities, including any action taken on the handling of any routine incidents; ()
 - g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; ()
 - h. Notations and times of unusual incidents, problems, disturbances, escapes; ()
 - i. Notations and times of any use of emergency or restraint equipment; and ()
 - j. Notation and times of perimeter security checks. ()
- 02. Housing Assignment Roster.** The detention center maintains a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. ()
- 03. Visitor's Register.** The detention center maintains a visitor's register in which the following will be recorded: ()
- a. Name of each visitor; ()
 - b. Time and date of visit; ()
 - c. Juvenile offender to be visited; and ()
 - d. Relationship of visitor to juvenile offender and other pertinent information. ()
- 04. Juvenile Detention Records.** The detention center will classify, retain and maintain an accurate and current record for each juvenile offender detained, in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record will contain, at a minimum, the following: ()
- a. Booking and intake records; ()
 - b. Record of court appearances; ()
 - c. Documentation of authority to hold; ()
 - d. Probation officer or caseworker, if assigned; ()
 - e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; ()
 - f. Classification records and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident; ()
 - g. Documentation of education as outlined in PREA Standard Section 115.333; ()

- h.** Rule infraction reports; ()
- i.** Records of disciplinary actions; ()
- j.** Grievances filed and their dispositions; ()
- k.** Release records; ()
- l.** Personal information and emergency contact information; ()
- m.** Documentation of a completed intake medical screening; ()
- n.** Visitor records; ()
- o.** Incident reports; ()
- p.** Photographs. ()

05. Incident Reports. Any person involved in or witness to an incident will write an individual incident report. The incident report includes, at a minimum, who, what, when, where, why, how, and action taken. Incident reports are written for situations including, but not limited to, the following: ()

- a.** Any criminal act; ()
- b.** Use of force; ()
- c.** Use of restraints, except for transfer; ()
- d.** Suicide or attempted suicide; ()
- e.** Escape or attempted escape; ()
- f.** Emergencies; ()
- g.** Serious rule violations; ()
- h.** Cross-gender searches; ()
- i.** Body cavity searches; ()
- j.** Seizure and disposition of contraband; and ()

k. Any incident deemed serious enough to disrupt or disturb the security, safety, and orderly operations or well-being of the center, staff, juveniles, or public. ()

06. Incident Report Review. All incident reports are reviewed by the detention center administrator, or designee, and be maintained as part of the detention center records. ()

252. MEDICAL INFORMATION.

01. Medical Files. The health authority will maintain medical records for each juvenile offender which are kept separate from other records. ()

02. Access to Medical Files. The detention center administrator, in conjunction with the health authority, will establish procedures to determine access to medical files in accordance with privacy laws. ()

253. -- 254. (RESERVED)

255. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT (PREA) COMPLIANCE.

01. Sexual Abuse of Juvenile Offenders. Juvenile detention centers shall be compliant with federal PREA Standards. ()

256. SAFETY AND EMERGENCY PROCEDURES.

01. Emergency Plan. The detention center will have written policies and procedures that address safety plans for responding to emergency situations. ()

02. Compliance with Fire Code. The detention center shall comply with local and state fire codes. A request for an annual inspection is made to the local fire marshal or authorized agency. The detention center maintains documentation of this inspection. ()

257. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual contains all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual is made available to all staff. ()

02. Personal Observation. The detention center will have written policy and procedures that govern the observation of all juvenile offenders and will, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks is logged. More frequent checks should be made of juvenile offenders who are violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation. ()

03. Cross-Gender Supervision. The detention center will have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which is based on privacy needs and legal standards. Except in emergencies, detention center employees will not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs will be observed. ()

04. Head Counts. The detention center will have written policy and procedures which outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts will be conducted every twenty-four (24) hours. At least one (1) count will be conducted each shift with at least four (4) hours between each count. ()

05. Camera Surveillance. Camera surveillance equipment will not be used in place of personal observation of juvenile offenders. ()

258. PHYSICAL INTERVENTION.

01. Appropriate Use of Physical Intervention. The detention center will have written policy and procedures which govern the use of physical intervention ()

a. The use of physical intervention will be restricted to the following situations, and then only to the degree necessary to restore order: ()

i. Instances of justifiable self-protection; ()

ii. The protection of others; ()

iii. The protection of property; ()

iv. The prevention of escapes; and ()

- v. The suppression of disorder. ()
- b. Physical intervention is not used as punishment. ()
- 02. Use of Chemical Agents.** The detention center will have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. ()
 - a. The use of chemical agents is restricted to the following situations, and then only to the degree necessary to restore order: ()
 - i. Instances of justifiable self-protection; ()
 - ii. The protection of others; ()
 - iii. The prevention of escapes; and ()
 - iv. The suppression of disorder. ()
 - b. Chemical agents will only be administered by an individual who has been certified in its use by a qualified instructor. ()
 - c. Oleoresin Capsicum is the only chemical agent approved for use in juvenile detention centers. ()
- 03. Use of Electroshock Devices.** The use of electroshock devices is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. ()
- 04. Use of Mechanical Restraints.** The detention center will have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. ()
 - a. The use of restraints is restricted to: ()
 - i. Instances of transfer; ()
 - ii. Instances of justifiable self-protection; ()
 - iii. The protection of others; ()
 - iv. The protection of property; ()
 - v. Medical reasons under the direction of medical staff; ()
 - vi. The prevention of escapes; and ()
 - vii. The suppression of disorder. ()
 - b. Restraints will not be used as punishment or for the convenience of staff. ()
 - c. Juvenile offenders in mechanical restraints are not left unattended except in documented exigent circumstances. ()
 - d. Eliminate the use of restraints on known pregnant juveniles housed in secure juvenile detention and correction facilities, during labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist in accordance with Juvenile Justice and Delinquency Prevention Act Sec. 233. 34 U.S.C. 11133. ()

259. PERIMETER SECURITY CHECKS AND SECURITY INSPECTIONS.

01. Perimeter Security Checks. The detention center will have written policy and procedures which govern the frequency and performing of perimeter security checks. ()

02. Security Inspections. The detention center will have written policy and procedures that require timely notification to the detention center administrator, or designee, of any structural or security deficiencies. The detention center administrator shall promptly correct any identified problems. The facility maintains documentation of any corrective action. ()

260. SEARCH AND SEIZURE.

01. Detention Center Search Plan. The detention center will have written policy and procedures which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work, or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. ()

02. Personal Searches. The detention center will have written policy and procedures governing the personal searches of juvenile offenders, to include pat, strip, visual body cavity, and body cavity searches for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders. Said policies and procedures include, at a minimum, requirements that: ()

a. All searches be performed under sanitary conditions in a manner which protects the dignity of the juvenile to the greatest extent possible; ()

b. All pat searches be performed by direct care personnel of the same sex as the juvenile, except under exigent circumstances; ()

c. All strip or visual body cavity searches be performed by direct care personnel of the same sex as the juvenile with the exception of medical personnel; ()

d. No person of the opposite sex of the juvenile, with the exception of medical personnel, will observe any unclothed search of the juvenile, including strip, visual body cavity, or body cavity searches; ()

e. All body cavity searches are conducted only by medical personnel; ()

f. An initial pat search is performed at the intake process prior to the removal of any mechanical restraints. A second pat search should be performed after the removal of any mechanical restraint; and ()

g. Any search or physical examination of transgender or intersex residents for the sole purpose of determining genital status is prohibited. ()

03. Documentation of Certain Searches. The detention center will have policy and procedures which govern the documentation of certain searches. Documentation is maintained in detention center records and in the juvenile offender's record, and include justification and any exigent circumstances concerning the search. Searches which must be documented include, but are not limited to; ()

a. Any search performed by direct care personnel of the opposite sex as the juvenile; ()

b. Any strip or visual body cavity search performed or observed by direct care personnel of the opposite sex of the juvenile; ()

c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or ()

d. Any strip, visual body cavity or body cavity search performed. ()

04. Seizure and Disposition of Contraband. The detention center will have written policy and procedures which explains the chain of custody to govern the handling and/or disposal of contraband. All contraband found during detention center or juvenile offender searches is seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband is documented. When a crime is suspected to have been committed within the detention center, all evidence is maintained and made available to the proper authorities. ()

261. SECURITY DEVICES.

01. Key Control. The detention center will have policy and procedures in place to govern key and tool control. ()

02. Security Devices. The detention center will have written policy and procedures that govern the use of security devices. Detention center employees use only security equipment on which they have been properly trained and is issued through, or authorized by, the detention center administrator. The facility maintains documentation of proper training. ()

03. Weapons Locker. The detention center provides a weapons locker or similar arrangement at security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who enter the detention center. ()

262. FOOD SERVICES.

The detention center will have written policy and procedures which govern food service. If food is not obtained through a food service contract from an outside source, the detention center's food service operation is supervised by a designated employee who has experience and/or training in meal preparation, menu planning, staff supervision, ordering procedures, health and safety policies, theft precautions, and inventory control. If food is obtained through a food service contract from an outside source, provisions are made to assure that the contractor complies with the applicable section of these rules. ()

263. MEALS.

01. Providing Meals. The detention center will have written policy and procedures which govern the provision of meals. Three (3) meals, at least two (2) of which includes a hot entree, are served daily. ()

a. Meals are served at approximately the same time every day. No more than fourteen (14) hours will elapse between the evening meal and breakfast the next day, unless an evening snack is served. If snacks are provided, up to sixteen (16) hours may elapse between the evening meal and breakfast. ()

b. Juvenile offenders out of the detention center attending court hearings or other approved functions when meals are served have a meal provided upon their return, if they have not already eaten. ()

c. If meals are provided to staff, the menu should be the same as provided to juvenile offenders. ()

d. Medical personnel is notified when a juvenile offender does not eat three (3) consecutive meals. ()

02. Withholding of Meals as Disciplinary Sanction Prohibited. The detention center will have written policy and procedures which dictate that meals are never withheld from juvenile offenders, nor the menu varied, as a disciplinary sanction. ()

03. Control of Utensils. The detention center will have a control system for the issuance and return of all food preparation and eating utensils. ()

264. SPECIAL DIETS.

The detention center will have written policy and procedures which govern special diets. ()

01. Special Diets, Medical. Special diets prescribed by a physician are followed according to the orders of the treating physician or dentist. ()

02. Special Diets, Religious. Provisions should be made for special diets when a juvenile offender's religious beliefs require adherence to particular dietary practices. ()

265. DIETARY RECORDS.

01. Food Service Records. The detention center maintains an accurate record of all meals served to juvenile offenders, including special diets. All menus are planned, dated, and available for review at least one (1) week in advance. Notations are made of any changes in the menu. Menus are retained at least one (1) year after use. ()

02. Review of Menus. Menus and records of meals served are reviewed on a regular basis at least annually by a licensed dietitian, physician or nutritionist to verify nutritional adequacy or will meet the current guidelines of the National School Lunch Program. The detention center maintains documentation of the dietitian's, physician's or nutritionist's review and verification. Subsequent menus are promptly revised to eliminate any deficiencies noted. ()

266. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center will have written policy and procedures to govern food service sanitation. Food service and related sanitation practices comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation is inspected in the manner and frequency mandated by local health authorities. The detention center administrator will solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections are documented and the detention center administrator takes prompt action to correct any identified problems. ()

267. SANITATION AND HYGIENE.

01. Sanitation Inspections. Written policy and procedures provide that the detention center be maintained in a clean and healthful condition and that the detention center administrator, or designee, will conduct monthly sanitation and maintenance inspections of all areas of the detention center. ()

02. Vermin Control. The detention center will have a plan for the control of vermin and pests which includes inspections and fumigations, as necessary, by a licensed pest control professional. ()

03. Housekeeping Plan. The detention center will have a written housekeeping plan for all areas of the physical plant which provides for daily housekeeping and maintenance by assigning specific duties to juvenile offenders and staff. All work is assigned and supervised by detention center employees. No juvenile offender is allowed to assign work to other juvenile offenders. ()

04. Maintenance and Repair. The detention center will have written policy and procedures to provide that all plumbing, lighting, heating and ventilation equipment, furnishings, and security hardware in juvenile offender living areas is kept in good working order. Any broken fixture, equipment, furnishings, or hardware is promptly repaired or replaced. Painted surfaces are not allowed to become scaled or deteriorated. ()

05. Water Quality. The water will meet all current standards set by the applicable state and local authority as to bacteriological, chemical, and physical tests for purity. ()

268. -- 269. (RESERVED)

270. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center will have written policy and procedures which govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene:

- ()
- a. Soap; ()
- b. Toothbrush; ()
- c. Toothpaste; ()
- d. Comb or brush; ()
- e. Shaving equipment; ()
- f. Products for female hygiene needs; and ()
- g. Toilet paper. ()

02. Removal of Personal Hygiene Items. The detention center will have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff, or others, or poses a security risk to the detention center. ()

03. Clothing and Linens. The detention center provides for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following is provided: ()

- a. A set of standard detention center clothing or uniform; ()
- b. A set of standard detention center bedding and linens; ()
- c. Fire-retardant mattress; ()
- d. Sufficient blankets to provide comfort under existing temperature conditions; and ()
- e. One (1) clean towel. ()

04. Laundry Services. Laundry services is sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. ()

a. Clothing and towels used by the juvenile offender while in the detention center are laundered or exchanged at least twice each week. ()

b. Linen is changed and laundered or exchanged at least once weekly or more often, as necessary. ()

c. Blankets in use are laundered or exchanged at least monthly, or before re-issue to another juvenile offender. ()

05. Clothing and Linen Supplies. The detention center inventory of clothing, bedding, linen, and towels will exceed the maximum population to ensure that a reserve is always available. ()

271. HEALTH SERVICES.

01. Health Care. The detention center will have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policies and procedures address, at a minimum, but not limited to, the following: ()

a. Intake medical screening is documented and performed on all juvenile offenders upon admission to the detention center. ()

- i. The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior ()
 - ii. The screening should also include observations of the physical condition, mental condition, and/or behavior. ()
 - b. Handling of juvenile offenders' requests for medical treatment; ()
 - c. Non-emergency medical services; ()
 - d. Emergency medical and dental services; ()
 - e. Use of a vehicle for emergency transport; ()
 - f. Emergency on-call physician and dental services when the emergency health care facility is not located nearby; ()
 - g. The availability of first-aid supplies; ()
 - h. Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; ()
 - i. Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; ()
 - j. Delousing; ()
 - k. Medical isolation, and proper examination of juvenile offenders suspected of having contagious or infectious diseases; ()
 - l. Management of pharmaceuticals, including storage in a secure location; and ()
 - m. Notification of next of kin or appropriate authorities in case of serious illness, injury or death. ()
- 02. Medical Judgments.** Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental care needs are determined by the medical personnel, who have final responsibility for decisions related to medical judgments. ()
- 03. Informed Consent.** Permission to perform medical, surgical, dental or other remedial treatment should be obtained from a parent, spouse, guardian, court or custodian, as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. ()
- 04. Health Appraisal.** Juvenile offenders are provided a health appraisal by the medical personnel within fourteen (14) days of admission. ()

272. -- 274. (RESERVED)

275. RULES AND DISCIPLINE.

- 01. Behavioral Management.** The detention center will have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle apply: ()
- a. The conduct of juvenile offenders is regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; ()

b. The detention center has written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; ()

c. Disciplinary action is of a nature to regulate juvenile offenders' behavior within acceptable limits and is taken at such times and in such degrees, as necessary to accomplish this objective; ()

d. The behavior of juvenile offenders is controlled in an impartial and consistent manner; ()

e. Disciplinary action is not arbitrary, capricious, retaliatory, or vengeful; ()

f. Corporal or unusual punishment is prohibited. Care is taken to ensure juvenile offenders are free from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; ()

g. Juvenile offenders will not be subject to any situation in which juvenile offenders impose discipline on each other. ()

02. Resolution of Rule Infractions. The detention center will have written policy and procedures to define and govern the resolution of rule infractions. ()

03. Grievance Procedures. The detention center will have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. ()

04. Criminal Law Violations. The detention center will have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. ()

276. COMMUNICATION AND CORRESPONDENCE.

01. Mail, Visiting, Telephone. The detention center will have written policy and procedures that govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders will have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. ()

02. Resident Access to Outside Support Services. The facility provides residents with access to outside victim advocates for emotional support services related to sexual abuse, as outlined by PREA Standard Section 115.353. ()

03. Mail Service. Mail, other than sent to or received from public officials, judges, attorneys, courts, government officials and officials of the confining authority, may be opened and inspected for contraband. ()

04. Telephone Service. All juvenile offenders, except those restricted as a result of disciplinary action, are provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. ()

a. Telephone calls may be monitored and notification is provided to the juvenile. ()

b. The detention center may require that any costs for telephone calls be borne by the juvenile offender or the party called. ()

c. Written policy and procedures grant all juvenile offenders the right to make at least one (1) telephone call to family members, attorneys, or other approved individuals during the admissions process. ()

d. Juveniles are allowed a reasonable number of telephone calls to their attorneys that: ()

- i. Are of reasonable duration; ()
- ii. Are not monitored; and ()
- iii. Are not revoked as a disciplinary measure. ()

05. Visitation Restrictions. The parents or legal guardians, probation officer, parole officer, detention center administrator or the court of jurisdiction may impose restrictions on who may visit a juvenile offender. ()

06. Search of Visitors. Written policy and procedures will specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. ()

07. Confidential Visits. The detention center provides juvenile offenders adequate opportunities for confidential access to courts, attorneys, and their authorized representatives, probation and parole officers, law enforcement, counselors, caseworkers, and the clergy. ()

08. Visitation. Attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy are permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. ()

a. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy are not monitored, except that detention center employees may visually observe the visitation, as necessary to maintain appropriate levels of security. ()

b. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. ()

277. ADMISSION.

01. Orientation Materials. Written policy and procedures provide that new juvenile offenders receive orientation materials, including conduct rules. If, at any time, a literacy or language barrier is recognized, the detention center makes good-faith efforts to ensure that the juvenile offender understands the material. ()

02. Procedures for Admission. The detention center will have written policies and procedures for admission of juvenile offenders that address, but is not limited to, the following: ()

a. Determination that the juvenile offender is lawfully detained in the detention center, in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code; ()

b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; ()

c. Any juvenile offender showing signs of impairment should not be admitted to the detention center without documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; ()

d. A complete search of the juvenile offender and possessions; ()

e. Pat searches are performed before mechanical restraints are removed at the admissions process. A second pat search should be performed after the removal of any mechanical restraint; ()

f. The care and disposition of personal property; ()

g. Provision of shower and the issuance of detention clothing and personal hygiene articles; ()

- h.** The provision of medical, dental and mental health screening; ()
 - i.** Male and female juvenile offenders will not occupy the same sleeping room; ()
 - j.** The recording of basic personal data and information; ()
 - k.** Aiding juvenile offenders in notifying their families of their admission and the discussion of procedures for mail and visitation; ()
 - l.** The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and ()
 - m.** The administration of the MAYSI or other approved assessment tool. ()
- 03. Court Appearance Within Twenty-Four Hours.** Written policy and procedures ensure that, according to Title 20, Chapter 5, Section 20-516(4), Idaho Code, any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays, for a detention hearing to determine where the juvenile offender will be placed until the next hearing. ()
- 04. Limitations of Detention.** Written policy and procedures are in place to limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. ()

278. RELEASE.

- 01. Release of Offender.** Written policy and procedures will govern the release of any juvenile offender and the release process including, but not limited to: ()
- a.** Verification of juvenile offender’s identity; ()
 - b.** Verification of release papers; ()
 - c.** Completion of release arrangements, including the person or agency to whom the juvenile offender is being released: ()
 - d.** Return of personal effects; and ()
 - e.** Completion of any pending action. ()
- 02. Temporary Release.** Written policy and procedures will govern escorted and unsecured day leaves into the community. ()
- 03. Personal Property Complaints.** Written policy and procedures will govern a process for handling complaints about personal property. ()
- 04. Disposal of Property.** Property not claimed within four (4) months of a juvenile offender’s discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. ()

279. PROGRAMS AND SERVICES AVAILABLE.

- 01. Programs and Services.** The detention center will have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services include, at a minimum, the following: ()
- a.** Access or referral to counseling; ()
 - b.** Religious services on a voluntary basis; ()

- c. One (1) hour per day, five (5) days per week of large muscle exercise; ()
- d. Passive recreational activities: ()
- e. Regular and systematic access to reading material: ()
- f. Work assignments; and ()
- g. Educational programs according to the promulgated rules of the Idaho State Department of Education. ()

02. Records of Participation in Programs and Services. Records of participation in programs and services is recorded in daily shift log, juvenile offender's file, or program records. ()

03. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services is documented. ()

280. -- 284. (RESERVED)

285. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

01. Applicability. All standards in this section, except where exceptions are stated, apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. ()

02. Code Compliance. In addition to these rules, all new construction and renovation will comply with the applicable ADA, building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal, and state law. Standards herein which exceed those of the local authority will take precedence. ()

03. Site Selection. Juvenile detention centers should be located to facilitate access to community resources and juvenile justice agencies. If the detention center is located on the grounds or in a building with any other correctional facility, it is constructed as a separate, self-contained unit in compliance with Title 20, Chapter 5, Section 20-518, Idaho Code. ()

04. General Conditions. All newly constructed or renovated juvenile detention centers will conform to the following general conditions: ()

a. Light levels in all housing areas are appropriate for the use and type of activities which occur. Night lighting will permit adequate illumination for supervision; ()

b. All living areas will provide visual access to natural light; ()

c. HVAC systems are designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; ()

d. All locks, detention hardware, fixtures, furnishings, and equipment have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; ()

e. Juvenile offenders' rights to privacy from unauthorized or degrading observation is protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; ()

f. The detention center has a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; ()

g. The security area of the detention center will have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed-circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television will not be used to routinely monitor the interior of sleeping rooms; and ()

h. All newly constructed or renovated detention centers will provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. ()

i. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency will consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse, as outlined by PREA Standard Section 115.318. ()

05. Admission and Release Area. The detention center will have an intake and release area that is located within the security perimeter, but apart from other living and activity areas. ()

a. Adequate space is allocated for, at least, but not limited to: ()

i. Reception; ()

ii. Booking; ()

iii. Search; ()

iv. Shower and clothing exchange; ()

v. Medical screening; ()

vi. Storage of juvenile offender's personal property and detention center clothing; ()

vii. Telephone calls; ()

viii. Interviews; and ()

ix. Release screening and processing. ()

b. If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple purposes and, at capacity, provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender. ()

c. Temporary holding rooms have access to a toilet and wash basin with hot and cold water. ()

06. Single Occupancy Rooms. Single occupancy sleeping rooms or cells have a minimum of thirty-five (35) square feet of unencumbered space and are equipped with at least a bed above the floor. ()

07. Multiple Occupancy Rooms. Multiple occupancy sleeping rooms or cells have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room's rated capacity and are equipped with at least a bed off the floor for each juvenile offender. ()

08. Sanitation and Seating. All single or multiple occupancy sleeping rooms are equipped with or

have twenty-four (24) hours per day access, without detention center staff assistance, to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: ()

- a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; ()
- b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and ()
- c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. ()

09. Day Room and Multi-Purpose Room. The detention center will have at least one (1) day room and multi-purpose room that provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. ()

10. Program Space. Adequate space is allocated for, but not limited to: ()

- a. Educational programs; ()
- b. Individual and group activities; ()
- c. Exercise and recreation, indoor and outdoor; ()
- d. Visitation; ()
- e. Confidential attorney and clergy interviews; and ()
- f. Counseling. ()

11. Interview Space. A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials is provided. At least one (1) confidential interview area is required. ()

12. Medical Service Space. Space is provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. ()

13. Food Service. The kitchen or food service area will have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area should be properly equipped and have adequate storage space for the quantity of food prepared and served. ()

14. Laundry. Where laundry services are provided in-house, there will be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. ()

15. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment is provided within the secure perimeter of the detention center. ()

16. Security Equipment Storage. A secure storage area is provided for all chemical agents, weapons, and security equipment. ()

17. Administration Space. Adequate space is provided that includes, but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. ()

18. Public Lobby. A public lobby or waiting area is provided that includes sufficient seating and toilets. Public access to security and administrative work areas will be restricted. All parts of the detention center that

are accessible to the public will be accessible to, and usable by, persons with disabilities in compliance with ADA standards. ()

286. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates amendments to the proposed text as adopted in the pending rule.

**05.01.04 – ~~UNIFORM STANDARDS FOR~~ RULES GOVERNING COUNTY
JUVENILE PROBATION AND DETENTION SERVICES**

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, Idaho Code. ()

001. SCOPE.

These rules ~~are established to~~ ensure that all county juvenile probation ~~services~~ departments and county juvenile detention centers operate under consistent standards based on the principles of accountability, community protection, and competency development with oversight by the Department. (3-31-22)()

~~002. ADMINISTRATIVE APPEALS.~~

~~This chapter does not provide for appeal of the administrative requirements for agencies.~~ (3-31-22)

~~003.~~ -- ~~0109.~~ (RESERVED)

SUBCHAPTER A – RULES FOR JUVENILE PROBATION DEPARTMENTS

~~010.~~ **DEFINITIONS.**

In addition to the definitions in Section 20-502, Idaho Code, ~~the following definitions apply~~ the definition in Section 110 apply to the interpretation and enforcement of Subchapter A only: (3-31-22)()

01. Balanced Approach. An approach to juvenile justice that gives balanced attention to holding offenders accountable, developing competencies, and protecting the community. ()

02. Case Management Plan. A plan developed in collaboration with those directly involved in a juvenile's case to address criminogenic risk factors and identified needs. ()

03. Evidence-Based Practices. Practices that are demonstrated to be effective through empirical research. ()

~~04. Graduated Sanctions Responses.~~ An evidence-based model for juvenile offenders that combines accountability and sanctions with increasingly intensive treatment and rehabilitation services. A system of graduated incentives and sanctions to respond to juvenile offender's behavior. (3-31-22)()

05. Juvenile Probation Department. Any public or private agency, made up of one (1) or more staff, administered by or contracted with the court or county to provide juvenile probation and supervision services to a county at the expense and concurrence of the county commissioners. ~~Services may include intake, diversion, supervision, restitution, and community service work.~~ (3-31-22)()

06. Juvenile Probation Officer. An employee, who is POST-certified or working towards POST certification, of a juvenile probation department ~~who is~~ responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court

orders. (3-31-22)()

07. Probation. A legal status created by a court order that permits a juvenile offender to remain in the community with conditions and restrictions imposed by the court. ()

08. Recidivism. A measure ~~that counts the number~~ of juvenile offenders who are adjudicated of a new misdemeanor or felony offense within a specified time period. (3-31-22)()

~~**09. Validated Risk/Needs Assessment.** A validated instrument that measures a juvenile's criminal risk factors and specific needs that, if addressed, should reduce the juvenile's likelihood to reoffend.~~ (3-31-22)

~~0111. – 099119.~~ (RESERVED)

1020. REVIEW PROVISIONS.

The ~~Idaho Department of Juvenile Corrections~~ will collaborate with the courts and the counties to visit and review all juvenile probation departments to assess compliance with these rules. ~~A written report of each review will be prepared by the Department and provided to the appropriate juvenile probation administrator with copies to the county commissioners and the administrative judge.~~ (3-31-22)()

01. Frequency. Each juvenile probation department should be reviewed triennially. ()

02. Review of Records and Staff. All case files and related documents, policy and procedures manuals, and training records should be available for review excluding personnel records and personnel action reports. Review team members may privately interview juvenile offenders, parents/guardians of juvenile offenders, and staff concerning any matter pertaining to these standards. ()

03. Consultation with Judges. Judges assigned to preside over juvenile cases in the county should be contacted for information related to compliance with the standards. ()

121. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile probation departments shall conform to applicable laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such probation department is located. ()

122. WRITTEN REPORT.

The Department prepares a written report of each review within ninety (90) days following such review that is provided to the appropriate juvenile probation administrator with copies to the county commissioners and the judges presiding over juvenile cases. ()

~~10423. – 1929.~~ (RESERVED)

200130. ADMINISTRATION.

01. ~~Department~~–Mission Statement. Juvenile probation departments should have a department mission statement that incorporates the principles of the balanced approach and guides the operations of the department. (3-31-22)()

02. Policies and Procedures. Juvenile probation departments ~~shall~~ will have policies and procedures for the operation of the department that are consistent with existing laws, local rules, and evidence-based practices. All written policies, procedures, and rules and regulations should be dated, reviewed at least annually, and made available to department employees. Policies will include administrative procedures for the following: (3-31-22)()

a. Roles of employees and organizational authority within the department; ()

b. Communication and dissemination of pertinent information to staff; ()

- c. Records management in accordance with Idaho Court Administrative Rule 32; and ()
- d. Internal case review to ensure the quality of supervision and compliance with standards. ()

~~03. Fidelity. Juvenile probation departments should demonstrate that practices adhere to department protocols and program models. (3-31-22)~~

~~043. Data. Juvenile probation departments should have policies and procedures to collect and analyze data on at least an annual basis that allows for an analysis of local trends in juvenile justice, measures recidivism, and evaluates any other identified department objectives. ()~~

~~201131. – 299139.(RESERVED)~~

~~300140. STAFF QUALIFICATIONS AND STAFF DEVELOPMENT.~~

All juvenile probation departments will have written policy and procedures governing staffing, to include: ()

~~01. Minimum Qualifications: ()~~

~~a. Juvenile probation officers should meet and maintain the minimum standards of employment as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()~~

~~b. Juvenile probation officers should adhere to the Idaho Juvenile Probation Officer Code of Ethics and the Code of Ethics/Standards of Conduct as provided in IDAPA 11.11.01. (3-31-22)()~~

~~02. Training and Staff Development: ()~~

~~a. All juvenile probation officers will earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. ()~~

~~ab. Juvenile probation departments should ensure staff training based on their written policy and procedures. The training should meet staff needs, be reviewed regularly, and address current trends. The training should also ensure that all juvenile probation officers earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. (3-31-22)()~~

~~bc. Juvenile probation officers should obtain at least twenty (20) hours of continuing education each year after certification as a juvenile probation officer. At least six (6) hours of annual continuing education should be on evidence-based/best practices in juvenile justice. ()~~

~~ed. Each juvenile probation department will maintain accurate documentation of continued training hours for each juvenile probation officer. ()~~

~~301141. – 399149.(RESERVED)~~

~~400150. JUVENILE PROBATION SERVICES.~~

All juvenile probation departments ~~shall operate in accordance with IDAPA 05.01.04 and~~ will have policies and procedures regarding the following: ~~(3-31-22)()~~

~~01. Balanced Approach Model. Supervision of juvenile offenders and services provided to juvenile offenders and their families should be based on the Balanced Approach Model. ()~~

~~02. Engaging and Involving Families. Juvenile probation officers should document efforts to engage and involve a juvenile offender’s family and/or other supportive individuals. ()~~

~~03. Validated Risk Assessment. A validated risk assessment should be utilized to determine the criminogenic risk factors and needs of the juvenile offender, assist in making recommendations to the court, and in developing individualized case plans to include length of probation and to determine level and type of supervision, frequency of contact, and intensity of services. (3-31-22)()~~

04. Assessments. Assessments by other qualified providers should be utilized when applicable to assist in making recommendations to the Court and in developing individualized case plans. (3-31-22)()

~~**05. Risk and Need Classification.** Risk assessment and supplemental assessment results should be used to recommend length of probation and to determine level and type of supervision, frequency of contact, and intensity of services. (3-31-22)~~

~~**06.5 Case Management Plans.** Individualized case management plans ~~should~~ focus on the most significant criminogenic risks as identified by the risk assessment and supplemental assessments. The plan ~~should~~ prioritize and address es moderate or higher criminogenic risks, needs, and ~~responsivity factors, rated moderate or higher, with special emphasis on addressing anti-social attitudes, values, and beliefs~~ other individual factors. Case management plans ~~should be~~ are reviewed with the juvenile and/or their parent/guardian and updated, as needed, per department policy. (3-31-22)()~~

~~**07.6 Collateral Contacts.** Juvenile probation officers should conduct collateral contacts and verify information about juvenile offenders that is important to the supervision process. ()~~

~~**08.7 Documentation.** Juvenile probation officers should maintain timely and accurate records of each juvenile offender under supervision, consistent with ~~the juvenile~~ probation department policies. (3-31-22)()~~

~~**09.8 Evidence Based/Best Practices and Programs.** Evidence-based/best practices and programs should be utilized to promote a greater likelihood of positive outcomes. ()~~

~~**10.9 Collaboration with Community Partners.** Juvenile probation officers should collaborate with public and private agencies to assist juveniles and their families to obtain services and utilize community resources. These partners may include, but are not limited to, treatment providers, employment agencies, law enforcement, school systems, and other government and non-profit organizations. (3-31-22)()~~

~~**11.0 Court Reports.** Reports should provide the Court pertinent information as well as sufficient detail regarding the risks and needs of the juvenile. ()~~

~~a. Any recommendations contained in ~~the~~ reports should be based on the Balanced Approach Model. Recommendations should address the risk and needs of the juvenile and the juvenile's family including supervision, treatment, and any other special conditions ~~applicable based on the juvenile's risk~~. (3-31-22)()~~

~~b. Information in reports should be verified to ensure accuracy and credibility of the information. ()~~

~~c. Juvenile probation departments should have procedures to review and approve reports to ensure quality control and consistency. ()~~

~~d. All reports should be filed in a timely manner as determined by the Court and department policies. ()~~

~~**12.1 Use of Detention for Status Offenders.** ~~Policies should reflect the risk/needs principle and the use of graduated sanctions. Alternatives to detention should be sought out for low risk offenders~~ Detention placement for status offenses should not be used unless court ordered by a judge pursuant to Idaho Juvenile Rule 17(e). Discretionary detention time is not imposed for status offenses. (3-31-22)()~~

~~**13.2 Physical Intervention.** ~~In the event a juvenile probation department authorizes the use of chemical agents or other weapons, juvenile probation officers must be certified for their use by a certified instructor. Physical force used in instances of justifiable protection of the juvenile or others must be documented~~ Policies regarding physical interventions should include direction on allowable interventions, training required, the use of chemical agents or other weapons, and documentation of any physical force used. (3-31-22)()~~

~~**14.3 Reporting of Abuse/Neglect.** Physical and sexual abuse and neglect must be reported and~~

documented in accordance with Section 16-1605, Idaho Code. ()

154. Transfer of Cases. Transfer of cases should occur in accordance with chapter 5, Title 20, Idaho Code, and Idaho Juvenile Rule 10. ()

a. Juvenile probation officers should communicate with the county where a juvenile will reside regardless of whether or not supervision will be requested. Such communication should occur as soon as a change in residence is determined. ()

b. The juvenile probation department in the sending county should communicate, in writing, to the juvenile probation department in the receiving county regarding the supervision request. Information provided should include juvenile and guardian name, address, phone, school (if known), criminal history, disposition and terms, and conditions of supervision. ()

c. In the event a juvenile is relocating to or from another state, the juvenile probation officer should comply with the provisions of the Interstate Compact for Juveniles, Chapter 19, Title 16, Idaho Code. ()

165. Absconders. Reasonable steps should be taken to locate juvenile offenders who fail to report for probation supervision and whose whereabouts are unknown. ()

176. Transportation of Juveniles. All juvenile probation officers who transport a juvenile will have a valid driver's license in good standing and valid proof of insurance. ()

187. Release of Information. Information contained in probation files is confidential and may only be released in accordance with [Idaho Court Administrative Rule 32](#) and state and federal laws. Written policy and procedures should include what information can be provided, who should provide the information, and how it should be provided. [\(3-31-22\)](#)()

198. Additional Policy and Procedures. Juvenile probation departments will establish written policy and procedures in accordance with their county policies regarding the following (if applicable): ()

a. Diversions; ()

b. Victim and community restoration; ()

c. Search and seizure; ()

d. Drug testing; ()

e. [Graduated responses;](#) ()

ef. Probation violations; ()

f. [Medical emergencies; and](#) [\(3-31-22\)](#) ()

g. [Use of detention; and](#) ()

gh. Termination of cases. ()

~~401~~[151](#). -- ~~999~~[209](#).(Reserved)

SUBCHAPTER B – RULES FOR JUVENILE DETENTION CENTERS

210. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the definitions in Section 210 apply to the interpretation and enforcement of Subchapter B only. ()

- 01. Body Cavity Search.** The manual internal examination into the rectal or vaginal cavities to detect contraband, performed only by a medical authority. ()
- 02. Chemical Agent.** An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. ()
- 03. Classification.** A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. ()
- 04. Contact Visitation.** A program that permits juvenile offenders to visit with designated person(s) in an area free of obstacles or barriers that prohibit physical contact. ()
- 05. Contraband.** Any item not issued or authorized by the detention center. ()
- 06. Corporal or Unusual Punishment.** Any act of inflicting punishment directly on the body, causing pain or injury. ()
- 07. Day Room/Multi-Purpose Room.** That portion of the housing unit used for varied juvenile offender activities that is separate and distinct from the sleeping rooms. ()
- 08. Detention Center.** A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. ()
- 09. Detention Records.** Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, headcounts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. ()
- 10. Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. ()
- 11. Electroshock Device.** A device which delivers an electric shock designed to temporarily disrupt muscle function. ()
- 12. Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. ()
- 13. Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. ()
- 14. Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. ()
- 15. Health-Trained Employee.** A person who operates within the limits of any license or certification to aid a physician, nurse, physician's assistant, or other professional medical staff ()
- 16. Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. ()
- 17. Incident Report.** A written document reporting any occurrence or event, or an incident which threatens the safety and security of direct care staff, juvenile offenders, or others, or which threatens the security of the program and which requires a staff response. ()
- 18. Juvenile Detention Officer.** Responsible for the safety, care, protection, and monitoring of

juvenile offenders. ()

19. Juvenile Detention Records. Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. ()

20. Mechanical Restraints. Devices used to restrict physical activity. ()

21. Medical Personnel. A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. ()

22. Medical Records. Records maintained by the health authority, to include medical examinations, diagnoses, and any medical care provided. ()

23. Medical Screening. A system of structured observation and initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. ()

24. Pat Search. The running of the hands over the clothed body of a juvenile by an employee to determine whether the individual possesses contraband. ()

25. Perimeter Security Check. Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breaches. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas, as designated by detention center policy and procedures. ()

26. Petition for Exemption. A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. ()

27. Physical Intervention. Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. ()

28. Prison Rape Elimination Act of 2003 (PREA). Public Law No. 108-79, including all subsequent amendments thereto as codified in 34 U.S.C. §§ 30301-30309, and all federal rules and standards promulgated thereunder, which promote zero (0) tolerance of sexual abuse of juvenile offenders by staff or by other juvenile offenders. ()

29. Rated Capacity. The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. ()

30. Renovation. The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. ()

31. Rule Infraction. A violation of detention center rules of conduct or policy and procedures, as governed by detention center policy and procedures. ()

32. Safety Equipment. Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. ()

33. Security Devices. Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment

used to maintain detention center security. ()

34. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. ()

35. Strip Search. A search that requires a juvenile to remove or arrange some or all clothing so as to permit a visual inspection of the juvenile's breasts, buttocks, or genitalia. ()

36. Volunteer. A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for their services or time. Volunteers will not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. ()

211. -- 219. (RESERVED)

220. INSPECTION PROVISIONS.

The Department or its designee has the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. ()

01. Annual Visits. Each juvenile detention center is subject to announced or unannounced visits by Department representatives on at least an annual basis. ()

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports will be available for review excluding medical records, personnel records and personnel action reports. Department representatives will be allowed to observe and privately interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives will have access to all parts of the detention center for the purpose of inspecting the physical plant. ()

221. Department Prepared Written Report Or Their Agents.

Department representatives will prepare a written report of each inspection within ninety (90) days following such inspection and provide copies to the appropriate detention center administrator and the governing body. The report is submitted to the Director for review of the issuance or renewal of a certificate of compliance. ()

222. Compliance With Standards Enforced.

Upon completion of an inspection, the Department will send notice of such compliance or noncompliance to the detention center administrator, governing body responsible for the detention center, and Idaho County Risk Management Program, where applicable. ()

01. Development of a Plan of Corrective Action. Upon receipt of a notice of noncompliance from the Department, the detention center administrator and governing body shall develop a plan of corrective action to correct the deficiencies cited in the report. The plan will include a description of the nature of noncompliance for each standard cited, the steps to be taken to correct the deficiency, and a projected completion date. Inspection representatives will be available to advise and consult concerning an appropriate corrective action. The plan is submitted to the Department for approval no later than sixty (60) days from receipt of notice. ()

02. Demonstration of Meaningful Progress Toward Achieving Compliance. Meaningful progress toward achieving compliance, according to the submitted plan, demonstrated during the time frame approved by the Department in the corrective action plan. ()

223. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile detention centers shall conform to laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such detention center is located including, but not limited to, all applicable public health, safety, fire codes, building regulations, and interstate compact regulations. ()

224. STANDARDS COMMITTEE.

A standards committee will be created for the purpose of reviewing the standards, petitions for exemption from

standards, and requests for modification of standards. The committee will be comprised of county juvenile detention administrators or their designees, and representative(s) from the Department. The committee should strive for regional representation when possible. The final appointment of all Standards Committee members is made by the Director. ()

01. Terms. Committee members serve terms of two (2) years starting on October 1 of the year in which the member is nominated and approved. ()

02. Abstain from Voting. If a petition for exemption or request for modification is initiated from the same district as a Committee representative, that Committee representative will abstain from voting and the alternate will serve in place of said representative. ()

03. Standards Committee Meetings. The Standards Committee will meet at least biennially to review the Juvenile Detention Center Standards, requests for modification of standards, or petitions for exemptions. The Standards Committee will also meet when the Director determines that a special meeting is necessary to review the juvenile detention center standards, requests for modification of standards, or petitions for exemptions. ()

04. Requests for Modification of Standards. In the event a standard becomes obsolete or unworkable, a request for modification may be filed with the Director. The request is submitted by the juvenile detention administrators of the Idaho Association of County Juvenile Justice Administrators. The Director makes determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. If convened, the Standards Committee reviews the request and submits its written recommendations to the Director. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. ()

05. Modification of Standards by the Standards Committee. In the event that the Standards Committee determines that a standard is obsolete, unworkable, unclear, or otherwise unreasonable, the committee may submit written recommendations to the Director for changes to the standards, along with explanations regarding the reasons for the requested changes. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. Any modification of the standards must be promulgated as rules in accordance with the Idaho Administrative Procedures Act. ()

225. -- 229. (RESERVED)

230. DETENTION CENTER ADMINISTRATION.

01. Legal Entity. The public or private agency operating a detention center is a legal entity, part of a legal entity, or a political subdivision. ()

02. Governing Body. Governing body means any public or private entity established or delegated as a source of legislative or administrative authority to provide the fiscal needs of the detention center administrator so that he may carry out the provisions of these rules. ()

03. Detention Center Administrator. The detention center will have a designated administrator who is responsible for all detention center operations. ()

04. Mission Statement. The detention center will have a written mission statement which describes its philosophy and goals. ()

05. Policy and Procedures. The detention center administrator will develop and maintain written policy and procedures which safeguard the basic rights of juvenile offenders and safeguard the juvenile offenders' freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policies and procedures are reviewed on a regular basis, updated as needed and made available to all detention center employees. The policy and procedures manual is submitted to the prosecuting attorney, or other legal authority, for review, and to county commissioners, or other governing authority, for approval. After such approval, a copy of the policy and procedures manual is submitted to the Department. ()

231. -- 239. (RESERVED)

240. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center must be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. ()

02. Staffing. The detention center will have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center will have policies and procedures in place governing staffing and submit a staffing plan to the Department as requested. It is recommended that each secure juvenile facility maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which need full documentation. ()

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. ()

b. If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. ()

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. During the admission process, an employee of the same gender as the juvenile offender should be present. ()

04. Minimum Qualifications. ()

a. Direct care staff, at the time of employment, must meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

b. Volunteers, before starting volunteer services, must meet the minimum criminal history background requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

c. The agency will conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. ()

05. Training and Staff Development Plan. Each juvenile detention center will develop a staff training and development plan based on the policies and procedures of the detention center. The plan will also ensure that all full-time juvenile detention officers earn the juvenile detention officer certificate, as mandated in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

a. All new full-time direct care staff are provided training that addresses areas including, but not limited to: ()

i. First aid/CPR; ()

ii. Security procedures; ()

iii. Supervision of juvenile offenders; ()

iv. Suicide prevention; ()

- v. Fire and emergency procedures; ()
- vi. Safety procedures; ()
- vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer use of force lesson plan; ()
- viii. Report writing; ()
- ix. Juvenile offender rules of conduct; ()
- x. Rights and responsibilities of juvenile offenders; ()
- xi. Key control; ()
- xii. Interpersonal relations; ()
- xiii. Social/cultural lifestyles of the juvenile population; ()
- xiv. Communication skills; ()
- xv. Mandatory reporting laws and procedures; ()
- xvi. Professional boundaries; and ()
- xvii. All training as outlined in section 115.331 of the PREA Standards. ()
- b.** All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week will obtain a part-time juvenile detention officer certification, as mandated by IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()
- c.** Any staff who works in a facility classified as Rural Exception or a collocated facility will obtain a part-time juvenile detention officer certificate of completion from the Department. ()
- d.** Ongoing training is provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which include, but are not limited to: ()
 - i. At least eight (8) hours of use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer lesson plan; and ()
 - ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and ()
 - iii. All other trainings that require recertification. ()
- e.** Volunteers and contractors are trained commensurate to their level of contact with juvenile offenders. ()
- f.** Each facility maintains accurate training documentation. ()

241. -- 249. (RESERVED)

250. DETENTION CENTER INFORMATION SYSTEMS.

01. Records. The detention center will have written policies and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center.

Written policy and procedures will address, at a minimum, the following: ()

- a. Accuracy of information, including procedures for verification; ()
- b. Security of information, including access and protection from unauthorized disclosure; ()
- c. Content of records; ()
- d. Maintenance of records; ()
- e. Length of retention; and ()
- f. Method of storage or disposal of inactive records. ()

02. Release of Information. Prior to the release of information to agencies other than criminal justice authorities or other agencies with a court order for access, a written release of information is obtained from the juvenile offender's parent, legal guardian or through a court order with a copy of that release placed in the juvenile offender's file folder. ()

03. Access to Records. Parents, legal guardians, legal representatives, and staff is permitted access to information in the juvenile offender's files and records, as authorized by law. Absent a court order to the contrary, the detention center administrator may restrict access to certain information, or provide a summary of the information when its disclosure presents a threat to the safety and security of the detention center or may be detrimental to the best interests of the juvenile offender. If access to records is denied or restricted, documentation that states the reason for the denial or restriction is maintained by the detention center administrator. ()

251. DOCUMENTATION.

01. Shift Log. The detention center maintains documentation including time notations on each shift which includes the following information, at a minimum: ()

- a. Direct care staff on duty; ()
- b. Time and results of security or well-being checks and head counts; ()
- c. Names of juvenile offenders received or discharged with times recorded; ()
- d. Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; ()
- e. Time of meals served; ()
- f. Times and shift activities, including any action taken on the handling of any routine incidents; ()
- g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; ()
- h. Notations and times of unusual incidents, problems, disturbances, escapes; ()
- i. Notations and times of any use of emergency or restraint equipment; and ()
- j. Notation and times of perimeter security checks. ()

02. Housing Assignment Roster. The detention center maintains a master file or roster board

indicating the current housing assignment and status of all juvenile offenders detained. ()

03. Visitor’s Register. The detention center maintains a visitor’s register in which the following will be recorded: ()

a. Name of each visitor; ()

b. Time and date of visit; ()

c. Juvenile offender to be visited; and ()

d. Relationship of visitor to juvenile offender and other pertinent information. ()

04. Juvenile Detention Records. The detention center will classify, retain and maintain an accurate and current record for each juvenile offender detained, in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record will contain, at a minimum, the following: ()

a. Booking and intake records; ()

b. Record of court appearances; ()

c. Documentation of authority to hold; ()

d. Probation officer or caseworker, if assigned; ()

e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; ()

f. Classification records and information about a resident’s personal history and behavior to reduce the risk of sexual abuse by or upon a resident; ()

g. Documentation of education as outlined in PREA Standard Section 115.333; ()

h. Rule infraction reports; ()

i. Records of disciplinary actions; ()

j. Grievances filed and their dispositions; ()

k. Release records; ()

l. Personal information and emergency contact information; ()

m. Documentation of a completed intake medical screening; ()

n. Visitor records; ()

o. Incident reports; ()

p. Photographs. ()

05. Incident Reports. Any person involved in or witness to an incident will write an individual incident report. The incident report includes, at a minimum, who, what, when, where, why, how, and action taken. Incidents reports are written for situations including, but not limited to, the following: ()

a. Any criminal act; ()

- b.** Use of force; ()
- c.** Use of restraints, except for transfer; ()
- d.** Suicide or attempted suicide; ()
- e.** Escape or attempted escape; ()
- f.** Emergencies; ()
- g.** Serious rule violations; ()
- h.** Cross-gender searches; ()
- i.** Body cavity searches; ()
- j.** Seizure and disposition of contraband; and ()
- k.** Any incident deemed serious enough to disrupt or disturb the security, safety, and orderly operations or well-being of the center, staff, juveniles, or public. ()

06. Incident Report Review. All incident reports are reviewed by the detention center administrator, or designee, and be maintained as part of the detention center records. ()

252. MEDICAL INFORMATION.

01. Medical Files. The health authority will maintain medical records for each juvenile offender which are kept separate from other records. ()

02. Access to Medical Files. The detention center administrator, in conjunction with the health authority, will establish procedures to determine access to medical files in accordance with privacy laws. ()

253.-- 254. (RESERVED)

255. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT (PREA) COMPLIANCE.

01. Sexual Abuse of Juvenile Offenders. Juvenile detention centers shall be compliant with federal PREA Standards. ()

556. SAFETY AND EMERGENCY PROCEDURES.

01. Emergency Plan. The detention center will have written policies and procedures that address safety plans for responding to emergency situations. ()

02. Compliance with Fire Code. The detention center shall comply with local and state fire codes. A request for an annual inspection is made to the local fire marshal or authorized agency. The detention center maintains documentation of this inspection. ()

257. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual contains all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual is made available to all staff. ()

02. Personal Observation. The detention center will have written policy and procedures that govern the observation of all juvenile offenders and will, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks is logged. More

frequent checks should be made of juvenile offenders who are violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation. ()

03. Cross-Gender Supervision. The detention center will have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which is based on privacy needs and legal standards. Except in emergencies, detention center employees will not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs will be observed. ()

04. Head Counts. The detention center will have written policy and procedures which outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts will be conducted every twenty-four (24) hours. At least one (1) count will be conducted each shift with at least four (4) hours between each count. ()

05. Camera Surveillance. Camera surveillance equipment will not be used in place of personal observation of juvenile offenders. ()

258. PHYSICAL INTERVENTION.

01. Appropriate Use of Physical Intervention. The detention center will have written policy and procedures which govern the use of physical intervention ()

a. The use of physical intervention will be restricted to the following situations, and then only to the degree necessary to restore order: ()

i. Instances of justifiable self-protection; ()

ii. The protection of others; ()

iii. The protection of property; ()

iv. The prevention of escapes; and ()

v. The suppression of disorder. ()

b. Physical intervention is not used as punishment. ()

02. Use of Chemical Agents. The detention center will have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. ()

a. The use of chemical agents is restricted to the following situations, and then only to the degree necessary to restore order: ()

i. Instances of justifiable self-protection; ()

ii. The protection of others; ()

iii. The prevention of escapes; and ()

iv. The suppression of disorder. ()

b. Chemical agents will only be administered by an individual who has been certified in its use by a qualified instructor. ()

c. Oleoresin Capsicum is the only chemical agent approved for use in juvenile detention centers. ()

03. Use of Electroshock Devices. The use of electroshock devices is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. ()

04. Use of Mechanical Restraints. The detention center will have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. ()

a. The use of restraints is restricted to: ()

i. Instances of transfer; ()

ii. Instances of justifiable self-protection; ()

iii. The protection of others; ()

iv. The protection of property; ()

v. Medical reasons under the direction of medical staff; ()

vi. The prevention of escapes; and ()

vii. The suppression of disorder. ()

b. Restraints will not be used as punishment or for the convenience of staff. ()

c. Juvenile offenders in mechanical restraints are not left unattended except in documented exigent circumstances. ()

d. Eliminate the use of restraints on known pregnant juveniles housed in secure juvenile detention and correction facilities, during labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist in accordance with Juvenile Justice and Delinquency Prevention Act Sec. 233. 34 U.S.C. 11133. ()

259. PERIMETER SECURITY CHECKS AND SECURITY INSPECTIONS.

01. Perimeter Security Checks. The detention center will have written policy and procedures which govern the frequency and performing of perimeter security checks. ()

02. Security Inspections. The detention center will have written policy and procedures that require timely notification to the detention center administrator, or designee, of any structural or security deficiencies. The detention center administrator shall promptly correct any identified problems. The facility maintains documentation of any corrective action. ()

260. SEARCH AND SEIZURE.

01. Detention Center Search Plan. The detention center will have written policy and procedures which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work, or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. ()

02. Personal Searches. The detention center will have written policy and procedures governing the personal searches of juvenile offenders, to include pat, strip, visual body cavity, and body cavity searches for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders. Said policies and procedures include, at a minimum, requirements that: ()

a. All searches be performed under sanitary conditions in a manner which protects the dignity of the juvenile to the greatest extent possible; ()

b. All pat searches be performed by direct care personnel of the same sex as the juvenile, except under exigent circumstances; ()

c. All strip or visual body cavity searches be performed by direct care personnel of the same sex as the juvenile with the exception of medical personnel; ()

d. No person of the opposite sex of the juvenile, with the exception of medical personnel, will observe any unclothed search of the juvenile, including strip, visual body cavity, or body cavity searches; ()

e. All body cavity searches are conducted only by medical personnel; ()

f. An initial pat search is performed at the intake process prior to the removal of any mechanical restraints. A second pat search should be performed after the removal of any mechanical restraint; and ()

g. Any search or physical examination of transgender or intersex residents for the sole purpose of determining genital status is prohibited. ()

03. Documentation of Certain Searches. The detention center will have policy and procedures which govern the documentation of certain searches. Documentation is maintained in detention center records and in the juvenile offender's record, and include justification and any exigent circumstances concerning the search. Searches which must be documented include, but are not limited to; ()

a. Any search performed by direct care personnel of the opposite sex as the juvenile; ()

b. Any strip or visual body cavity search performed or observed by direct care personnel of the opposite sex of the juvenile; ()

c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or ()

d. Any strip, visual body cavity or body cavity search performed. ()

04. Seizure and Disposition of Contraband. The detention center will have written policy and procedures which explains the chain of custody to govern the handling and/or disposal of contraband. All contraband found during detention center or juvenile offender searches is seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband is documented. When a crime is suspected to have been committed within the detention center, all evidence is maintained and made available to the proper authorities. ()

261. SECURITY DEVICES.

01. Key Control. The detention center will have policy and procedures in place to govern key and tool control. ()

02. Security Devices. The detention center will have written policy and procedures that govern the use of security devices. Detention center employees use only security equipment on which they have been properly trained and is issued through, or authorized by, the detention center administrator. The facility maintains documentation of proper training. ()

03. Weapons Locker. The detention center provides a weapons locker or similar arrangement at security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who enter the detention center. ()

262. FOOD SERVICES.

The detention center will have written policy and procedures which govern food service. If food is not obtained

through a food service contract from an outside source, the detention center's food service operation is supervised by a designated employee who has experience and/or training in meal preparation, menu planning, staff supervision, ordering procedures, health and safety policies, theft precautions, and inventory control. If food is obtained through a food service contract from an outside source, provisions are made to assure that the contractor complies with the applicable section of these rules. ()

263. MEALS.

01. Providing Meals. The detention center will have written policy and procedures which govern the provision of meals. Three (3) meals, at least two (2) of which includes a hot entree, are served daily. ()

a. Meals are served at approximately the same time every day. No more than fourteen (14) hours will elapse between the evening meal and breakfast the next day, unless an evening snack is served. If snacks are provided, up to sixteen (16) hours may elapse between the evening meal and breakfast. ()

b. Juvenile offenders out of the detention center attending court hearings or other approved functions when meals are served have a meal provided upon their return, if they have not already eaten. ()

c. If meals are provided to staff, the menu should be the same as provided to juvenile offenders. ()

d. Medical personnel is notified when a juvenile offender does not eat three (3) consecutive meals. ()

02. Withholding of Meals as Disciplinary Sanction Prohibited. The detention center will have written policy and procedures which dictate that meals are never withheld from juvenile offenders, nor the menu varied, as a disciplinary sanction. ()

03. Control of Utensils. The detention center will have a control system for the issuance and return of all food preparation and eating utensils. ()

264. SPECIAL DIETS.

The detention center will have written policy and procedures which govern special diets. ()

01. Special Diets, Medical. Special diets prescribed by a physician are followed according to the orders of the treating physician or dentist. ()

02. Special Diets, Religious. Provisions should be made for special diets when a juvenile offender's religious beliefs require adherence to particular dietary practices. ()

265. DIETARY RECORDS.

01. Food Service Records. The detention center maintains an accurate record of all meals served to juvenile offenders, including special diets. All menus are planned, dated, and available for review at least one (1) week in advance. Notations are made of any changes in the menu. Menus are retained at least one (1) year after use. ()

02. Review of Menus. Menus and records of meals served are reviewed on a regular basis at least annually by a licensed dietitian, physician or nutritionist to verify nutritional adequacy or will meet the current guidelines of the National School Lunch Program. The detention center maintains documentation of the dietitian's, physician's or nutritionist's review and verification. Subsequent menus are promptly revised to eliminate any deficiencies noted. ()

266. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center will have written policy and procedures to govern food service sanitation. Food service and related sanitation practices comply with the requirements of the state

health department or other appropriate regulatory body. The detention center's food service operation is inspected in the manner and frequency mandated by local health authorities. The detention center administrator will solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections are documented and the detention center administrator takes prompt action to correct any identified problems. ()

267. SANITATION AND HYGIENE.

01. Sanitation Inspections. Written policy and procedures provide that the detention center be maintained in a clean and healthful condition and that the detention center administrator, or designee, will conduct monthly sanitation and maintenance inspections of all areas of the detention center. ()

02. Vermin Control. The detention center will have a plan for the control of vermin and pests which includes inspections and fumigations, as necessary, by a licensed pest control professional. ()

03. Housekeeping Plan. The detention center will have a written housekeeping plan for all areas of the physical plant which provides for daily housekeeping and maintenance by assigning specific duties to juvenile offenders and staff. All work is assigned and supervised by detention center employees. No juvenile offender is allowed to assign work to other juvenile offenders. ()

04. Maintenance and Repair. The detention center will have written policy and procedures to provide that all plumbing, lighting, heating and ventilation equipment, furnishings, and security hardware in juvenile offender living areas is kept in good working order. Any broken fixture, equipment, furnishings, or hardware is promptly repaired or replaced. Painted surfaces are not allowed to become scaled or deteriorated. ()

05. Water Quality. The water will meet all current standards set by the applicable state and local authority as to bacteriological, chemical, and physical tests for purity. ()

268. -- 269. (RESERVED)

270. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center will have written policy and procedures which govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene: ()

- a.** Soap; ()
- b.** Toothbrush; ()
- c.** Toothpaste; ()
- d.** Comb or brush; ()
- e.** Shaving equipment; ()
- f.** Products for female hygiene needs; and ()
- g.** Toilet paper. ()

02. Removal of Personal Hygiene Items. The detention center will have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff, or others, or poses a security risk to the detention center. ()

03. Clothing and Linens. The detention center provides for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following is provided: ()

- a.** A set of standard detention center clothing or uniform; ()
 - b.** A set of standard detention center bedding and linens; ()
 - c.** Fire-retardant mattress; ()
 - d.** Sufficient blankets to provide comfort under existing temperature conditions; and ()
 - e.** One (1) clean towel. ()
- 04. Laundry Services.** Laundry services is sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. ()
- a.** Clothing and towels used by the juvenile offender while in the detention center are laundered or exchanged at least twice each week. ()
 - b.** Linen is changed and laundered or exchanged at least once weekly or more often, as necessary. ()
 - c.** Blankets in use are laundered or exchanged at least monthly, or before re-issue to another juvenile offender. ()
- 05. Clothing and Linen Supplies.** The detention center inventory of clothing, bedding, linen, and towels will exceed the maximum population to ensure that a reserve is always available. ()

271. HEALTH SERVICES.

- 01. Health Care.** The detention center will have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policies and procedures address, at a minimum, but not limited to, the following: ()
- a.** Intake medical screening is documented and performed on all juvenile offenders upon admission to the detention center. ()
 - i.** The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior ()
 - ii.** The screening should also include observations of the physical condition, mental condition, and/or behavior. ()
 - b.** Handling of juvenile offenders' requests for medical treatment; ()
 - c.** Non-emergency medical services; ()
 - d.** Emergency medical and dental services; ()
 - e.** Use of a vehicle for emergency transport; ()
 - f.** Emergency on-call physician and dental services when the emergency health care facility is not located nearby; ()
 - g.** The availability of first-aid supplies; ()
 - h.** Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; ()

i. Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; ()

j. Delousing; ()

k. Medical isolation, and proper examination of juvenile offenders suspected of having contagious or infectious diseases; ()

l. Management of pharmaceuticals, including storage in a secure location; and ()

m. Notification of next of kin or appropriate authorities in case of serious illness, injury or death. ()

02. Medical Judgments. Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental care needs are determined by the medical personnel, who have final responsibility for decisions related to medical judgments. ()

03. Informed Consent. Permission to perform medical, surgical, dental or other remedial treatment should be obtained from a parent, spouse, guardian, court or custodian, as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. ()

04. Health Appraisal. Juvenile offenders are provided a health appraisal by the medical personnel within fourteen (14) days of admission. ()

272. -- 274. (RESERVED)

275. RULES AND DISCIPLINE.

01. Behavioral Management. The detention center will have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle apply: ()

a. The conduct of juvenile offenders is regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; ()

b. The detention center has written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; ()

c. Disciplinary action is of a nature to regulate juvenile offenders' behavior within acceptable limits and is taken at such times and in such degrees, as necessary to accomplish this objective; ()

d. The behavior of juvenile offenders is controlled in an impartial and consistent manner; ()

e. Disciplinary action is not arbitrary, capricious, retaliatory, or vengeful; ()

f. Corporal or unusual punishment is prohibited. Care is taken to ensure juvenile offenders are free from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; ()

g. Juvenile offenders will not be subject to any situation in which juvenile offenders impose discipline on each other. ()

02. Resolution of Rule Infractions. The detention center will have written policy and procedures to define and govern the resolution of rule infractions. ()

03. Grievance Procedures. The detention center will have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. ()

04. Criminal Law Violations. The detention center will have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. ()

276. COMMUNICATION AND CORRESPONDENCE.

01. Mail, Visiting, Telephone. The detention center will have written policy and procedures that govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders will have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. ()

02. Resident Access to Outside Support Services. The facility provides residents with access to outside victim advocates for emotional support services related to sexual abuse, as outlined by PREA Standard Section 115.353. ()

03. Mail Service. Mail, other than sent to or received from public officials, judges, attorneys, courts, government officials and officials of the confining authority, may be opened and inspected for contraband. ()

04. Telephone Service. All juvenile offenders, except those restricted as a result of disciplinary action, are provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. ()

a. Telephone calls may be monitored and notification is provided to the juvenile. ()

b. The detention center may require that any costs for telephone calls be borne by the juvenile offender or the party called. ()

c. Written policy and procedures grant all juvenile offenders the right to make at least one (1) telephone call to family members, attorneys, or other approved individuals during the admissions process. ()

d. Juveniles are allowed a reasonable number of telephone calls to their attorneys that: ()

i. Are of reasonable duration; ()

ii. Are not monitored; and ()

iii. Are not revoked as a disciplinary measure. ()

05. Visitation Restrictions. The parents or legal guardians, probation officer, parole officer, detention center administrator or the court of jurisdiction may impose restrictions on who may visit a juvenile offender. ()

06. Search of Visitors. Written policy and procedures will specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. ()

07. Confidential Visits. The detention center provides juvenile offenders adequate opportunities for confidential access to courts, attorneys, and their authorized representatives, probation and parole officers, law enforcement, counselors, caseworkers, and the clergy. ()

08. Visitation. Attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy are permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. ()

a. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy are not monitored, except that detention center employees may visually observe the visitation, as necessary to maintain appropriate levels of security. ()

b. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. ()

277. ADMISSION.

01. Orientation Materials. Written policy and procedures provide that new juvenile offenders receive orientation materials, including conduct rules. If, at any time, a literacy or language barrier is recognized, the detention center makes good-faith efforts to ensure that the juvenile offender understands the material. ()

02. Procedures for Admission. The detention center will have written policies and procedures for admission of juvenile offenders that address, but is not limited to, the following: ()

a. Determination that the juvenile offender is lawfully detained in the detention center, in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code; ()

b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; ()

c. Any juvenile offender showing signs of impairment should not be admitted to the detention center without documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; ()

d. A complete search of the juvenile offender and possessions; ()

e. Pat searches are performed before mechanical restraints are removed at the admissions process. A second pat search should be performed after the removal of any mechanical restraint; ()

f. The care and disposition of personal property; ()

g. Provision of shower and the issuance of detention clothing and personal hygiene articles; ()

h. The provision of medical, dental and mental health screening; ()

i. Male and female juvenile offenders will not occupy the same sleeping room; ()

j. The recording of basic personal data and information; ()

k. Aiding juvenile offenders in notifying their families of their admission and the discussion of procedures for mail and visitation; ()

l. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and ()

m. The administration of the MAYSI or other approved assessment tool. ()

03. Court Appearance Within Twenty-Four Hours. Written policy and procedures ensure that, according to Title 20, Chapter 5, Section 20-516(4), Idaho Code, any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays, for a detention hearing to determine where the juvenile offender will be placed until the next hearing. ()

04. Limitations of Detention. Written policy and procedures are in place to limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. ()

278. RELEASE.

01. Release of Offender. Written policy and procedures will govern the release of any juvenile offender and the release process including, but not limited to: ()

a. Verification of juvenile offender’s identity: ()

b. Verification of release papers: ()

c. Completion of release arrangements, including the person or agency to whom the juvenile offender is being released: ()

d. Return of personal effects; and ()

e. Completion of any pending action. ()

02. Temporary Release. Written policy and procedures will govern escorted and unsecured day leaves into the community. ()

03. Personal Property Complaints. Written policy and procedures will govern a process for handling complaints about personal property. ()

04. Disposal of Property. Property not claimed within four (4) months of a juvenile offender’s discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. ()

279. PROGRAMS AND SERVICES AVAILABLE.

01. Programs and Services. The detention center will have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services include, at a minimum, the following: ()

a. Access or referral to counseling: ()

b. Religious services on a voluntary basis: ()

c. One (1) hour per day, five (5) days per week of large muscle exercise: ()

d. Passive recreational activities: ()

e. Regular and systematic access to reading material: ()

f. Work assignments; and ()

g. Educational programs according to the promulgated rules of the Idaho State Department of Education. ()

02. Records of Participation in Programs and Services. Records of participation in programs and services is recorded in daily shift log, juvenile offender’s file, or program records. ()

03. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of services is documented. ()

280. -- 284. (RESERVED)

285. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

01. Applicability. All standards in this section, except where exceptions are stated, apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. ()

02. Code Compliance. In addition to these rules, all new construction and renovation will comply with the applicable ADA, building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal, and state law. Standards herein which exceed those of the local authority will take precedence. ()

03. Site Selection. Juvenile detention centers should be located to facilitate access to community resources and juvenile justice agencies. If the detention center is located on the grounds or in a building with any other correctional facility, it is constructed as a separate, self-contained unit in compliance with Title 20, Chapter 5, Section 20-518, Idaho Code. ()

04. General Conditions. All newly constructed or renovated juvenile detention centers will conform to the following general conditions: ()

a. Light levels in all housing areas are appropriate for the use and type of activities which occur. Night lighting will permit adequate illumination for supervision; ()

b. All living areas will provide visual access to natural light; ()

c. HVAC systems are designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; ()

d. All locks, detention hardware, fixtures, furnishings, and equipment have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; ()

e. Juvenile offenders' rights to privacy from unauthorized or degrading observation is protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; ()

f. The detention center has a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; ()

g. The security area of the detention center will have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed-circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television will not be used to routinely monitor the interior of sleeping rooms; and ()

h. All newly constructed or renovated detention centers will provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. ()

i. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency will consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse, as outlined by PREA Standard Section 115.318. ()

05. Admission and Release Area. The detention center will have an intake and release area that is located within the security perimeter, but apart from other living and activity areas. ()

a. Adequate space is allocated for, at least, but not limited to: ()

- i. Reception; ()
- ii. Booking; ()
- iii. Search; ()
- iv. Shower and clothing exchange; ()
- v. Medical screening; ()
- vi. Storage of juvenile offender’s personal property and detention center clothing; ()
- vii. Telephone calls; ()
- viii. Interviews; and ()
- ix. Release screening and processing. ()
- b.** If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple purposes and, at capacity, provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender. ()
- c.** Temporary holding rooms have access to a toilet and wash basin with hot and cold water. ()
- 06. Single Occupancy Rooms.** Single occupancy sleeping rooms or cells have a minimum of thirty-five (35) square feet of unencumbered space and are equipped with at least a bed above the floor. ()
- 07. Multiple Occupancy Rooms.** Multiple occupancy sleeping rooms or cells have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room’s rated capacity and are equipped with at least a bed off the floor for each juvenile offender. ()
- 08. Sanitation and Seating.** All single or multiple occupancy sleeping rooms are equipped with or have twenty-four (24) hours per day access, without detention center staff assistance, to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: ()
 - a.** One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; ()
 - b.** One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and ()
 - c.** Tables and seating sufficient for the maximum number expected to use the room at one (1) time. ()
- 09. Day Room and Multi-Purpose Room.** The detention center will have at least one (1) day room and multi-purpose room that provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. ()
- 10. Program Space.** Adequate space is allocated for, but not limited to: ()
 - a.** Educational programs; ()
 - b.** Individual and group activities; ()
 - c.** Exercise and recreation, indoor and outdoor; ()

d. Visitation; ()

e. Confidential attorney and clergy interviews; and ()

f. Counseling. ()

11. Interview Space. A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials is provided. At least one (1) confidential interview area is required. ()

12. Medical Service Space. Space is provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. ()

13. Food Service. The kitchen or food service area will have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area should be properly equipped and have adequate storage space for the quantity of food prepared and served. ()

14. Laundry. Where laundry services are provided in-house, there will be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. ()

15. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment is provided within the secure perimeter of the detention center. ()

16. Security Equipment Storage. A secure storage area is provided for all chemical agents, weapons, and security equipment. ()

17. Administration Space. Adequate space is provided that includes, but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. ()

18. Public Lobby. A public lobby or waiting area is provided that includes sufficient seating and toilets. Public access to security and administrative work areas will be restricted. All parts of the detention center that are accessible to the public will be accessible to, and usable by, persons with disabilities in compliance with ADA standards. ()

401286. -- 999. (RESERVED)

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.01 – RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-2301 (ZBR CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-504(10), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing chapter 05.02.01 and intends to include requirements and expectations for contracted residential treatment providers as part of the contract language. Since not all providers have the same expectations, the contract will be an adequate and enforceable tool to communicate expectations. Contracted residential treatment providers will be audited annually for compliance with expectations.

IDAPA 05.02.01 IS BEING REPEALED IN ITS ENTIRETY. The notice of proposed rulemaking was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 199 through 200](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the state General Fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Estela Cabrera at (208) 577-5451.

DATED this 3rd of January, 2024.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720-0285
Phone: 208.334.5100
Fax: 208.334.5120

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 20-504(10), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

<p>Wednesday, October 25, 2023, at 2:00 p.m. MT</p> <p>954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting Meeting URL https://bluejeans.com/975592637/9404 Meeting ID 975 592 637 Participant Passcode 9404</p> <p>E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance.</p>
--

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing this chapter and intends to include expectations for contracted residential treatment providers as part of the contract language. Since not all providers have the same expectations, the contract will be an adequate and enforceable tool to communicate expectation. Contracted residential treatment providers will be audited annually for compliance with expectations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A.

FISCAL IMPACT: There is no negative fiscal impact on the state general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Volume 23-6, pages 37-38](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Estela Cabrera at (208) 577-5451.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 4th day of October, 2023.

IDAPA 05.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 11 – IDAHO STATE POLICE
11.07.01 – RULES GOVERNING MOTOR VEHICLES – GENERAL RULES
DOCKET NO. 11-0701-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 15-18](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Not applicable to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact as a result of this pending rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Major Matt Smith, Idaho State Police, (208) 884-7022, Email matt.smith@isp.idaho.gov.

DATED this 2nd day of November, 2023.

Lt Col. Bill Gardiner
Chief of Staff
Idaho State Police
700 S Stratford Drive
Meridian ID 83642
(208) 884-7004
Bill.gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5220(1) and 67-5220(2), 67-2907, and 49-901 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency no later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In support of the Governor's Red Tape Reduction Initiative and in accordance with the [Zero-Based Regulation E.O. 2020-01](#), the goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Not Applicable

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There are no fees associated with this proposed rule making.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2023 Idaho Administrative Bulletin, [Volume 23-7, Page 30-31](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Rules 20, 30, and 40 incorporate by reference various state and national safety codes and federal regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the Headquarters Office of the Idaho State Police, 700 S. Stratford Drive, Meridian, ID 83642. The following codes and standards are incorporated:

1. Society of Automotive Engineers (SAE). The SAE Ground Vehicle Lighting Standards Manual, 2009 edition, and SAE standards J586, J588, and J639 are published by the Society of Automotive Engineers and are available from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096-0001 and may be ordered by calling 1-888-875-3976 or on the worldwide web at <https://www.sae.org/publications> <http://store.sae.org/>.
2. Idaho State Department of Education, Standards for Idaho School Buses and Operations Manual. The Standards for Idaho School Buses and Operations Manual, effective July 1, 2018, is published by the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, ID 83720-0027 and may be ordered by calling 1-208-332-6800 or downloaded from the worldwide web at <http://www.sde.idaho.gov/student-transportation/files/forms-lists/regulations/SISBO-Manual-2018.pdf>.

3. Federal Regulations – 49 C.F.R. Parts 392, 393, and 571 (June 3, 2019). These regulations are found in the Code of Federal Regulations, available from the U.S. Government Publishing Office, Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954. The incorporated parts are also available on the worldwide web at <https://www.ecfr.gov/current/title-49>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Captain Matt Smith, (208) 884-7022, matt.smith@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 24th day of July, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 11-0701-2301

11.07.01 – RULES GOVERNING MOTOR VEHICLES – GENERAL RULES

000. LEGAL AUTHORITY.

These rules adopting national safety codes and standards are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67- 2901 and 49-901, Idaho Code. ()

001. SCOPE.

All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with these rules to the extent the rules are applicable. ()

002. DEFINITIONS.

The definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. ()

003. INCORPORATED BY REFERENCE.

Rules 20, 30, and 40 incorporate by reference various state and national safety codes and federal regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the Headquarters Office of the Idaho State Police 700 S. Stratford Drive, Meridian, ID 83642. The following codes and standards are incorporated: ()

01. Society of Automotive Engineers (SAE). The SAE Ground Vehicle Lighting Standards Manual, 2009 edition, and SAE standards J586, J588, and J639 are published by the Society of Automotive Engineers and are available from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096-0001 and may be ordered by calling 1-888-875-3976 or on the worldwide web at <https://www.sae.org/publications> <http://store.sae.org/>. ()

02. Idaho State Department of Education, Standards for Idaho School Buses and Operations Manual. The Standards for Idaho School Buses and Operations Manual, effective July 1, 2018, is published by the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, ID 83720-0027 and may be ordered by calling 1-208-332-6800 or downloaded from the worldwide web at <http://www.sde.idaho.gov/student-transportation/files/forms-lists/regulations/SISBO-Manual-2018.pdf>. ()

03. Federal Regulations – 49 C.F.R. Parts 392, 393, and 571 (June 3, 2019). These regulations are found in the Code of Federal Regulations, available from the U.S. Government Publishing Office, Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954. The incorporated parts are also available on the worldwide web at <https://www.ecfr.gov/current/title-49>. ()

004. -- 019. (RESERVED)

020. SOCIETY OF AUTOMOTIVE ENGINEERS (SAE).

In accordance with the SAE Ground Vehicle Lighting Standards Manual, and SAE standards J586, J588, and J639, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable provisions incorporated by reference in Subsection 003.01. ()

01. Standards and Specifications for Lighting Devices. Pursuant to Section 49-901(1), Idaho Code, the standards and specifications set forth by the Society of American Engineers in the SAE Ground Vehicle Lighting Standards Manual, as incorporated by reference in Subsection 003.01. ()

02. Standards for Rear Mounted Acceleration and Deceleration Lighting Systems (Use Optional). The current standards found in “Supplemental High Mounted Stop and Rear Turn Signal Lamps for Use on Vehicles Less Than 2032 MM Overall Width -- SAE J586 and J588,” is found in Section 49-921, Idaho Code, as incorporated by reference in Subsection 008.01. ()

03. Safety Practices and Standards for Automotive Air Conditioning Devices, Standards and Specifications. Pursuant to Section 49-901(7), Idaho Code, the current standards set forth in “Safety Practices For Mechanical Vapor Compression Refrigeration Equipment of Systems Used to Cool Passenger Compartment of Motor Vehicles -- SAE J639,” as incorporated by reference in Subsection 003.01. ()

021. -- 029. (RESERVED)

030. IDAHO STATE DEPARTMENT OF EDUCATION, STANDARDS FOR IDAHO SCHOOL BUSES AND OPERATIONS MANUAL.

In accordance with the “Standards for Idaho School Buses and Operations” manual, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable standards incorporated by reference in Subsection 003.02. ()

01. General Rules. Pursuant to Section 49-901(8), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 003.02. ()

02. Lighting Equipment. Pursuant to Section 49-901(2), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 003.02. ()

031. -- 039. (RESERVED)

040. FEDERAL REGULATIONS - 49 C.F.R. PARTS 392, 393, AND 571.

In accordance with Title 49 of the Code of Federal Regulations, Parts 392, 393, and 571, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable Parts found in Title 49 of the Code of Federal Regulations. ()

01. Certain Vehicles Required to Stop at All Railroad Crossings. Pursuant to Section 49-648, Idaho Code, the Director hereby incorporates by reference the requirements found in 49 C.F.R. Part 392, Subpart B, Section 392.10, as if set forth herein in full. ()

02. Devices With Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to Requirements for fuseses and liquid burning flares found in 49 C.F.R. 393.95. Warning devices with self-contained energy sources permissible, under this chapter are limited to liquid burning emergency flares, and fuseses.

()

03. Modulating Headlights for Motorcycles. Pursuant to Section 49-925, 49-901(3), 49-901(4), Idaho Code, the Director hereby approves modulating headlights for use on motorcycles. Such headlights shall conform to the standards and specifications with regard to modulating headlights found in 49 C.F.R. Section 571.108, Standard 108, S10.17.5.1, which is hereby adopted by reference as if set forth herein in full. ()

04. Standards for Safety Helmets. Pursuant to Section 49-666, Idaho Code, the Director hereby incorporates by reference the standards found in 49 C.F.R. Section 571.218, as if set forth herein in full. ()

05. Standards for Devices Without Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to reflex reflective and fluorescent material warning devices found in 49 C.F.R. Section 571.125, as if set forth herein in full. ()

041. -- 999. (RESERVED)

[Agency redlined courtesy copy]

11.07.01 – RULES GOVERNING MOTOR VEHICLES – GENERAL RULES

000. LEGAL AUTHORITY.

These rules adopting national safety codes and standards are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67- 2901 and 49-901, Idaho Code. ()

001. SCOPE.

All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with these rules to the extent the rules are applicable. ()

002. DEFINITIONS.

The definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. ()

003. INCORPORATED BY REFERENCE.

Rules 20, 30, and 40 incorporate by reference various state and national safety codes and federal regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the Headquarters Office of the Idaho State Police, ~~listed in Rule 004~~ 700 S. Stratford Drive, Meridian, ID 83642. The following codes and standards are incorporated: (3-23-22)()

01. Society of Automotive Engineers (SAE). The SAE Ground Vehicle Lighting Standards Manual, 2009 edition, and SAE standards J586, J588, and J639 are published by the Society of Automotive Engineers and are available from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096-0001 and may be ordered by calling 1-~~877-606-7323~~888-875-3976 or on the worldwide web at ~~http://store.sae.org/~~https://www.sae.org/publications http://store.sae.org/. (3-23-22)()

02. Idaho State Department of Education, Standards for Idaho School Buses and Operations Manual. The Standards for Idaho School Buses and Operations Manual, effective July 1, 2018, is published by the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, ID 83720-0027 and may be ordered by calling 1-208-332-6800 or downloaded from the worldwide web at http://www.sde.idaho.gov/student-transportation/files/forms-lists/regulations/SISBO-Manual-2018.pdf. ()

03. Federal Regulations – 49 C.F.R. Parts 392, 393, and 571 (June 3, 2019). These regulations are

found in the Code of Federal Regulations, available from the U.S. Government ~~Printing~~ Publishing Office, Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954. The incorporated parts are also available on the worldwide web at ~~https://www.ecfr.gov/cgi-bin/ECFR?page=browse~~ https://www.ecfr.gov/current/title-49. (3-23-22)()

004. -- 019. (RESERVED)

020. SOCIETY OF AUTOMOTIVE ENGINEERS (SAE).

In accordance with the SAE Ground Vehicle Lighting Standards Manual, and SAE standards J586, J588, and J639, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable provisions incorporated by reference in Subsection 0083.01. (3-23-22)()

01. Standards and Specifications for Lighting Devices. Pursuant to Section 49-901(1), Idaho Code, the standards and specifications set forth by the Society of American Engineers in the SAE Ground Vehicle Lighting Standards Manual, as incorporated by reference in Subsection 0083.01. (3-23-22)()

02. Standards for Rear Mounted Acceleration and Deceleration Lighting Systems (Use Optional). The current standards found in “Supplemental High Mounted Stop and Rear Turn Signal Lamps for Use on Vehicles Less Than 2032 MM Overall Width -- SAE J586 and J588,” is found in Section 49-921, Idaho Code, as incorporated by reference in Subsection 008.01. ()

03. Safety Practices and Standards for Automotive Air Conditioning Devices, Standards and Specifications. Pursuant to Section 49-901(7), Idaho Code, the current standards set forth in “Safety Practices For Mechanical Vapor Compression Refrigeration Equipment of Systems Used to Cool Passenger Compartment of Motor Vehicles -- SAE J639,” as incorporated by reference in Subsection 0083.01. (3-23-22)()

021. -- 029. (RESERVED)

030. IDAHO STATE DEPARTMENT OF EDUCATION, STANDARDS FOR IDAHO SCHOOL BUSES AND OPERATIONS MANUAL.

In accordance with the “Standards for Idaho School Buses and Operations” manual, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable standards incorporated by reference in Subsection 0063.02. (3-23-22)()

01. General Rules. Pursuant to Section 49-901(8), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 0063.02. (3-23-22)()

02. Lighting Equipment. Pursuant to Section 49-901(2), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 0063.02. (3-23-22)()

031. -- 039. (RESERVED)

040. FEDERAL REGULATIONS - 49 C.F.R. PARTS 392, 393, AND 571.

In accordance with Title 49 of the Code of Federal Regulations, Parts 392, 393, and 571, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable Parts found in Title 49 of the Code of Federal Regulations. ()

01. Certain Vehicles Required to Stop at All Railroad Crossings. Pursuant to Section 49-648, Idaho Code, the Director hereby incorporates by reference the requirements found in ~~Title 49 (49 C.F.R.) of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations)~~ Part 392, Subpart B, Section 392.10, as if set forth herein in full. (3-23-22)()

02. Devices With Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to Requirements for fuses and

liquid burning flares found in 49 C.F.R., ~~Part 393, Subpart H, Section~~ 393.95. Warning devices with self-contained energy sources permissible, under this chapter are limited to liquid burning emergency flares, and fuseses.

~~(3-23-22)~~()

03. Modulating Headlights for Motorcycles. Pursuant to Section 49-925, 49-901(3), 49-901(4), Idaho Code, the Director hereby approves modulating headlights for use on motorcycles. Such headlights shall conform to the standards and specifications with regard to modulating headlights found in 49 C.F.R. Section 571.108, Standard 108, ~~S7.9.4~~ ~~S10.17.5.1~~, which is hereby adopted by reference as if set forth herein in full. ~~(3-23-22)~~()

04. Standards for Safety Helmets. Pursuant to Section 49-666, Idaho Code, the Director hereby incorporates by reference the standards found in 49 C.F.R. Section 571.218, ~~Standard No. 218~~, as if set forth herein in full. ~~(3-23-22)~~()

05. Standards for Devices Without Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to reflex reflective and fluorescent material warning devices found in 49 C.F.R. Section 571.125, ~~Standard 125~~, as if set forth herein in full. ~~(3-23-22)~~()

041. -- 999. (RESERVED)

IDAPA 11 – IDAHO STATE POLICE

11.07.03 – RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

DOCKET NO. 11-0703-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

In support of the Governor's Red Tap Reduction Initiative and in accordance with the [Zero-Based Regulation E.O. 2020-01](#), the goal of this rulemaking is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol.23-9, pages 19-23](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Not applicable to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact associated with this rule making.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Major Matt Smith (208) 884-7022, Email matt.smith@isp.idaho.gov.

DATED this 3rd day of November, 2023.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S Stratford Drive
Meridian ID 83642
(208) 884-7004
Bill.gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-5220(1)M 67-5220(2) and 67-2901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency no later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In support of the Governor's Red Tape Reduction Initiative and in accordance with the [Zero-Based Regulation E. O. 2020-01](#), the goal of these rulemakings is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees associated with this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact as a result of this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2023, Idaho Administrative Bulletin, [Volume 23-7, Pages 23-33](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Captain Matt Smith, (208) 884-7022, matt.smith@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 24th day of July, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 11-0703-2301

11.07.03 – RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901, Idaho Code. ()

001. SCOPE.

The rules apply to emergency vehicles/authorized emergency vehicles under the jurisdiction of the Idaho State Police. They do not pertain to emergency vehicles as defined by Section 49-123, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Title 49, Chapter 1, Idaho Code, the following definition applies to this chapter. ()

01. Limited Authorized Vehicle. A vehicle to which a limited authorization is issued by the Director for limited emergency uses as defined by the Director upon agreement with an applicant under terms specified therein. ()

011. PURPOSE.

The purpose of this chapter is to specify a procedure to be followed to obtain approval for authorized emergency vehicles pursuant to Section 49-218, Idaho Code. ()

012. AUTHORIZATION REQUIREMENTS.

01. General. Any person, corporation, or municipal corporation, desiring to have a vehicle registered as an authorized emergency vehicle, pursuant to Section 49-218, Idaho Code, must apply for authorization by submitting a request to the Director that include the following: ()

- a.** A description of: ()
 - i.** The specific geographic area and purpose(s) for which the vehicle will be used; ()
 - ii.** The emergency vehicle listing year, make, model, vehicle identification number and license plate number; and ()
 - iii.** The lighting equipment and horns or warning devices to be used. ()
- b.** Written documentation indicating the vehicle will have radio communications between a central dispatch location and, when applicable, between other emergency vehicles. ()
- c.** Current certificate of liability and property damage insurance executed by an insurer authorized to transact insurance with notice of renewal being filed with the Director. The certificate must show expiration date, liability (single event and aggregate) and property damage coverage. The certificate of liability and property damage insurance must be carried in the limited authorized emergency vehicle and displayed upon the request of any law enforcement officer. ()

d. An explanation of the nature and the scope of the duties, responsibilities and the authority of the vehicle driver which necessitates the vehicle's registration as an authorized emergency vehicle. ()

e. A list of the names, addresses, and birthdates of all persons who use the vehicle as an authorized emergency vehicle. ()

f. Written documentation as to the emergency vehicle driving courses and hours of instruction completed by each driver. ()

g. A recommendation by the chief law enforcement officer or fire chief, if the vehicle is to be used for firefighting purposes, of each jurisdiction in which the vehicle is to be used stating that a need exists in said jurisdiction for the vehicle to be used as described in the application. ()

013. LIMITED AUTHORIZED EMERGENCY VEHICLE.

01. Application. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as a limited authorized emergency vehicle must apply for authorization to the Director on forms provided by the department that provides: ()

a. A description of the emergency vehicle including the year, make, model, vehicle identification number and license plate number. ()

b. A description of the emergency lighting equipment to be used on the emergency vehicle. in conformance with Section 49-623(3), Idaho Code, and Section 49-910A, Idaho Code. ()

02. Requirements for Driver. Each driver of an authorized emergency vehicle must: ()

a. Be eighteen (18) years of age or older and have valid driving privileges; and ()

b. Not have been convicted in any court within three (3) years of an offense of driving under the influence, reckless driving, failure to stop or report an accident, or any other conviction which the Director may deem a disqualifier. ()

014. AUTHORIZATION LIMITATIONS.

01. Durations. The authorization provided by the Director will be valid for one (1) year, will expire on June 30 of each subsequent year, and may be renewed prior to the expiration date. ()

02. Restrictions. An authorized emergency vehicle may be used for the purposes set forth in the application: ()

a. By the driver(s) named on the application. ()

b. With the equipment described in the application. ()

c. Within the geographical area described in the application. ()

03. Limited Restriction. A limited authorized emergency vehicle may not be used except: ()

a. Where a lane of traffic is obstructed or at the discretion of a peace officer, it may display a red, flashing light. ()

b. To gain access to accident or emergency scenes, it may use interstate system emergency crossovers, provided such usage is done in a safe manner. ()

04. Revocation. It is unlawful and cause for immediate revocation of the limited authorization if red

lights are used while traveling to or from an incident or an emergency or for any reason not described herein.

()

015. -- 020. (RESERVED)

021. PROCEDURE.

01. Approval. If the Director approves the application, he may issue a certificate of approval which is valid for thirty (30) days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant must bring the vehicle to a district office of the Idaho State Police to be examined to determine if the equipment is of an approved type and is properly mounted. An Idaho State Police trooper must certify the results of this examination on a form prescribed and provided by the department, and the applicant must file the form with the Idaho State Police.

()

02. Violation. Violation of any of the Rules is grounds for suspension or revocation of the authorized emergency vehicle agreement or limited authorized emergency vehicle agreement without prior written notice or opportunity for hearing.

()

03. Authorization. Any authorization may be terminated at any time without cause or prior written notice or opportunity for hearing by the Director or his designated representative.

()

04. Copy. A copy of the authorized emergency vehicle certificate approved by the Director or limited authorization certificate approved by the Director must be carried in each authorized vehicle and shown to any peace officer upon request.

()

022. -- 999. (RESERVED)

[Agency redlined courtesy copy]

11.07.03 – RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901(4), Idaho Code. (3-23-22)()

001. SCOPE.

The rules apply to emergency vehicles/authorized emergency vehicles under the jurisdiction of the Idaho State Police. They do not pertain to emergency vehicles as defined by Section 49-123, Idaho Code. (3-23-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~Unless specifically defined in this chapter,~~ In addition to the definitions in Title 49, Chapter 1, Idaho Code, the following definition applyies to this chapter. (3-23-22)()

01. Limited Authorized Vehicle. A vehicle to which a limited authorization is issued by the Director for limited emergency uses as defined by the Director upon agreement with an applicant under terms specified therein. ()

02. Driver. ~~Every person who is in actual physical control of an authorized emergency vehicle.~~

(3-23-22)

011. PURPOSE.

~~01. General.~~ The purpose of this chapter is to specify a procedure to be followed to obtain approval for authorized emergency vehicles pursuant to Section 49-218, Idaho Code. ~~Pursuant to Section 49-218, Idaho Code, the Director may designate any particular vehicle as an authorized emergency vehicle upon a finding that designation of that vehicle is necessary to the preservation of life or property or to the execution of an emergency governmental function.~~ (3-23-22)()

~~02. Emergency Vehicles.~~ This chapter will not pertain to emergency vehicles as defined by Section 49-123, Idaho Code, i.e., vehicles operated by any fire department or law enforcement agency of the state of Idaho or political subdivision thereof, and ambulances of any public utility or public service corporation. (3-23-22)()

012. AUTHORIZATION REQUIREMENTS.

01. **General.** Any person, ~~firm,~~ corporation, or municipal corporation, desiring to have a vehicle registered as an authorized emergency vehicle, pursuant to Section 49-218, Idaho Code, must apply for authorization by submitting a request to the Director ~~on forms provided by the department and~~ that include the following: (3-23-22)()

a. Provide a description of: (3-23-22)()

i. The specific geographic area in and purpose(s) for which the vehicle will be used ~~as an authorized emergency vehicle.~~ (3-23-22)()

ii. ~~The specific purposes for which the vehicle will be used as an emergency vehicle.~~ (3-23-22)

iii. The emergency vehicle listing year, make, model, vehicle identification number and license plate number; and (3-23-22)()

iv. ~~The emergency lighting equipment~~ and horns or warning devices to be used ~~on the emergency vehicle.~~ (3-23-22)()

v. ~~The emergency horns or warning devices to be used on the emergency vehicle.~~ (3-23-22)

b. ~~Provide w~~Written documentation indicating the ~~emergency~~ vehicle will have radio communications between a central dispatch location and, when applicable, between other emergency vehicles. (3-23-22)()

c. Maintain a Current certificate ~~or of~~ liability and property damage insurance executed by an insurer authorized to transact insurance ~~business with the state and have a copy on file in the Director's office and update it upon each renewal period,~~ with notice of renewal being filed with the Director. The certificate must show expiration date, liability (single event and aggregate) and property damage coverage. The certificate of liability and property damage insurance must be carried in the limited authorized emergency vehicle and displayed upon the request of any law enforcement officer. (3-23-22)()

d. Provide aAn explanation of the nature and the scope of the duties, responsibilities and the authority of the vehicle driver which necessitates the vehicle's registration as an authorized emergency vehicle. (3-23-22)()

e. Provide a list of the names, addresses, and birthdates, ~~social security numbers~~ of all persons who use the vehicle as an authorized emergency vehicle. (3-23-22)()

f. ~~Provide w~~Written documentation as to the emergency vehicle driving courses and hours of instruction completed by each driver. (3-23-22)()

g. Provide a recommendation by the chief law enforcement officer or fire chief, if the vehicle is to be used for firefighting purposes, of each jurisdiction in which the vehicle is to be used ~~as an authorized emergency~~

vehicle stating that a need exists in ~~such said~~ jurisdiction for the vehicle to be used as described in the application. ~~The Director may issue emergency vehicle authorization to vehicles which operate throughout the state.~~

(3-23-22)()

013. LIMITED AUTHORIZED EMERGENCY VEHICLE.

01. General Application. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as a limited authorized emergency vehicle must apply for authorization to the Director on forms provided by the department that provides ~~the following information:~~

(3-23-22)()

a. A description of the emergency vehicle ~~listing including the~~ year, make, model, vehicle identification number and license plate number.

(3-23-22)()

b. A description of the emergency lighting equipment to be used on the emergency vehicle. ~~in conformance with Section 49-623(3), Idaho Code, and Section 49-910A, Idaho Code.~~

(3-23-22)()

02. Requirements for Driver. Each driver of an authorized emergency vehicle must: (3-23-22)()

a. Be eighteen (18) years of age or older ~~and have valid driving privileges; and~~ (3-23-22)()

b. Not have been convicted in any court within three (3) years of an offense of driving under the influence ~~of alcohol, drugs, or any other intoxicating substance~~, reckless driving, failure to stop or report an accident, or any other conviction which the Director may deem a disqualifier ~~to drive an authorized emergency vehicle.~~

(3-23-22)()

e. ~~Not have had driving privileges suspended for any reason within the last three (3) years.~~ (3-23-22)

014. AUTHORIZATION LIMITATIONS.

01. Durations. The authorization provided by the Director will be valid for one (1) year. ~~The application for continued emergency vehicle authorization or limited emergency vehicle authorization must be, will expire on June 30 of each subsequent year, and may be~~ renewed prior to the expiration date.

(3-23-22)()

02. Restrictions. An authorized emergency vehicle may ~~not~~ be used ~~except as follows~~ for the purposes set forth in the application:

(3-23-22)()

a. ~~Only b~~By the driver(s) named on the ~~original or amended~~ application. (3-23-22)()

b. ~~Only w~~With the equipment described in the ~~original or amended~~ application. (3-23-22)()

c. ~~Only w~~Within the geographical area described in the ~~original or amended~~ application. (3-23-22)()

d. ~~Only for the purposes set forth in the original or amended application.~~ (3-23-22)

03. Limited Restriction. A limited authorized emergency vehicle may not be used ~~except as follows:~~

(3-23-22)()

a. Where a lane of traffic is obstructed or at the discretion of a peace officer, it may display a red, flashing light. ()

b. To gain access to accident or emergency scenes, it may use interstate system emergency crossovers, provided such usage is done in a safe manner. ()

e04. Revocation. It is unlawful and cause for immediate revocation of the limited authorization if red lights are used while traveling to or from an incident or an emergency or for any reason not described herein.

(3-23-22)()

015. -- 020. (RESERVED)

~~021.~~ **EQUIPMENT REQUIRED.**

~~01.~~ **Authority.** Pursuant to Section 49-901, Idaho Code, the Director has authority to approve and disapprove warning lighting devices on emergency vehicles and to issue and enforce regulations for such emergency warning lighting devices. (3-23-22)

~~02.~~ **Equipment.** Every authorized emergency vehicle must be equipped in conformance with Section 49-623(3), Idaho Code, with at least one (1) red light visible in a three hundred and sixty (360) degree arc at a distance of one thousand feet (1000') under normal atmospheric conditions and/or an audible signaling device having a decibel rating of at least one hundred (100) decibels at a distance of ten feet (10'). (3-23-22)

~~022.~~ **PROCEDURE.**

~~01.~~ **Approval.** If the Director approves the application, he may issue a certificate of approval which is valid for thirty (30) days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant must bring the vehicle to a district office of the Idaho State Police to be examined to determine if the equipment is of an approved type and is properly mounted. An Idaho State Police ~~officer~~ trooper must certify the results of this examination on a form prescribed and provided by the department, and the applicant must file the form with the Idaho State Police. (3-23-22)()

~~02.~~ **Carried.** The certificate of approval, and when issued the agreement or copies thereof, including all endorsements for changes of conditions, must be carried in the authorized emergency vehicle or limited authorized emergency vehicle at all times and be displayed upon request of any law enforcement officer. (3-23-22)

~~03.~~ **Violation.** Violation of any of the Rules is grounds for suspension or revocation of the authorized emergency vehicle agreement or limited authorized emergency vehicle agreement without prior written notice or opportunity for hearing. ()

~~04.~~ **Authorization.** Any authorization may be terminated at any time without cause or prior written notice or opportunity for hearing by the Director or his designated representative. ()

~~05.~~ **Copy.** A copy of the authorized emergency vehicle certificate approved by the Director or limited authorization certificate approved by the Director must be carried in each authorized vehicle and shown to any peace officer upon request. ()

~~06.~~ **Valid.** Any renewals or new applications expire on June 30 of each subsequent year following. (3-23-22)

~~023.~~ -- 999. (RESERVED)

IDAPA 11 – IDAHO STATE POLICE

11.10.01 – RULES GOVERNING IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

DOCKET NO. 11-1001-2301 (FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 19-5201, 19-5202, 19-5203, and 19-5204, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 24-26](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

As authorized in Section 19-5202, Idaho Code, the fee(s) in this rulemaking is being done to ensure the Idaho Public Safety and Information Security System (ILETS), can continue to provide the critical officer safety and other information used by law enforcement agencies across Idaho. The system is a vital link for law enforcement and provides 24/7 access to information that keeps communities safe. The proposed changes will ensure adequate funding is available to support the continued stable operation of the ILETS System. The change will impact only the ILETS Dedicated Fund and is necessary to protect the public health, safety, or welfare.

The following is a specific description of the fees imposed or increased. Idaho Code 19-5202 authorizes the access charges for users of the ILETS system. The following is the fee schedule that will be effective October 1, 2023.

Percentage of Total ILETS Message Traffic	Annual Usage Fee effective Oct. 1, 2023
0 - .25 %	\$3,750
.26 - .50 %	\$7,500
.51 - .75 %	\$15,000
.76 - 1.0 %	\$24,000
1.01 - 1.50 %	\$32,500
1.51 – 2.0 %	\$48,750
2.01 – 5.0 %	\$69,625
> 5.01 %	\$98,939

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking will have no fiscal impact on state funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bureau Chief, Leila McNeill, (208) 884-7136, Email, Leila.mcneill@isp.idaho.gov.

DATED this 3rd day of November, 2023.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S Stratford Drive
Meridian ID 83642
(208) 884-7004
Bill.gardiner@isp.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2023.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 19-5201, 19-5202, 19-5203, and 19-5204 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is being done to ensure the Idaho Public Safety and Information Security (ILETS), can continue to provide the critical officer safety and other information used by law enforcement agencies across Idaho. The system is a vital link for law enforcement and provides 24/7 access to information that helps keep communities safe. The proposed changes will ensure adequate funding to support the continued stable operation of the ILETS System.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Necessary to protect the public health, safety, or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Idaho Code 19-5202 authorizes the access chargers for users of the ILETS system. The following is the fee schedule that will be effective October 1, 2023.

Percentage of Total ILETS Message Traffic	Annual Usage Fee Effective October 1, 20142023
0 - .25 %	\$1,875 3,750
.26 - .50 %	\$3,750 7,500
.51 - .75 %	\$7,500 15,000
.76 - 1.0 %	\$15,000 24,000
1.01 - 1.50 %	\$22,500 32,500
1.51 – 2.0 %	\$33,750 48,750
2.01 – 5.0 %	\$50,625 69,625
> 5.01 %	\$75,939 98,939

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The proposed rulemaking will not have an impact on state funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking was conducted with all stakeholders prior to the last legislative session. All stakeholders agreed the increases were necessary to ensure continue operation.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

This rulemaking does not amend any documents incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bureau Chief, Leila McNeill, (208) 884-7136, Email: Leila.Mcneill@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27th, 2023.

DATED this 31st day of July, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1001-2301

018. USER ACCESS FEES.

01. **Payment of Fees Required.** Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-23-22)

02. **ILETS Network User Access Fees.** The access fees approved by the Board and to be collected quarterly in advance by the department are as follows: (3-23-22)

a. An agency at the county or municipal level pays an annual access fee of five thousand, four hundred and twenty-five dollars (\$5,425). (3-23-22)

b. An agency at the state, federal, or tribal level pays an annual access fee of nine thousand dollars (\$9,000). (3-23-22)

03. **Usage Fee.** Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network pays quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-23-22)

a. The usage fee is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee Effective October 1, 2014 2023
0 - .25 %	\$1,875 3,750
.26 - .50 %	\$3,750 7,500
.51 - .75 %	\$7,500 15,000
.76 - 1.0 %	\$15,000 24,000
1.01 - 1.50 %	\$22,500 32,500
1.51 - 2.0 %	\$33,750 48,750
2.01 - 5.0 %	\$50,625 69,625
> 5.01 %	\$75,939 98,939

(3-23-22)()

b. The department will conduct audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee. This fee is effective for two (2) years and begins with the quarterly statement beginning October 1 of odd-numbered years. (3-23-22)

c. If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access will be adjusted to reflect the combined historical usage. (3-23-22)

d. A new agency approved for direct ILETS access that does not have historical usage will be assessed an interim usage fee by the department pending the next audit of ILETS message traffic. The department sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal the interim usage fee set by the department to the ILETS Board. (3-23-22)

e. As operator of ILETS, the department, in lieu of payment of fees, provides direct and in-kind support of network operations. The Board reviews biennially the proportion of that support to the overall operating cost of the system. (3-23-22)

04. Billing and Payment. The department mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day. (3-23-22)

05. Sanctions for Delinquency. Any user agency that becomes delinquent in payment of assessed fees is subject to sanctions under Section 028. (3-23-22)

IDAPA 21 – DIVISION OF VETERANS SERVICES
21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES
DOCKET NO. 21-0104-2301
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature that must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 65-108 and 65-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change.

This Rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the March 1, 2023, Idaho Administrative Bulletin, [Vol. 23-3, pages 26-29](#).

FEE SUMMARY: The following is a description of the fee or charge imposed or increased in this rulemaking as authorized in Section 65-202, Idaho Code. Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

This expands eligibility for burial to non-Veteran National Guard and Reservists. Because the VA does not provide a burial benefit to these individuals, these newly eligible individuals who wish to be buried in the State Veterans Cemetery will have to cover the cost (equivalent to the VA reimbursement/plot allowance benefit) as well as the cost of the cemetery marker either \$400 for a casket/upright marker or \$250 for all other interment/memorial marker types.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kevin Wallior, 208-780-1308.

DATED this 6th day of October, 2023.

Kevin R. Wallior
Management Assistant
Idaho Division of Veterans Services
351 N. Collins Road
Boise, ID 83702
Ph: 208-780-1308, fax: 208-780-1301
email: kevin.wallior@veterans.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is March 1, 2023

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-108 and 65-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than March 15, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This Temporary Rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule complies with a new federal law, PUBLIC LAW 117-103 THE CONSOLIDATED APPROPRIATIONS ACT FOR FISCAL YEAR 2022 (Burial Equity for Guards and Reserves Act) which expands eligibility for State Veterans Cemeteries to non-military retiree Guard and Reservists without risking eligibility for VA Construction Grants for State Veterans Cemeteries.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

This law expands eligibility for burial National Guard and Reservists but does not expand eligibility for VA burial benefits. These newly eligible individuals who wish to be buried in the State Veterans Cemetery will have to cover the cost (equivalent to the VA reimbursement/plot allowance benefit) themselves.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is prompted by a federal law.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kevin Wallior, 208-780-1308.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before March 22, 2023.

DATED this 1st day of March, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0104-2301

Italicized text indicates amendments to the proposed text as adopted in the pending rule.

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing the Idaho State Veterans Cemetery pursuant to Section 65-202, Idaho Code. (3-23-22)()

(BREAK IN CONTINUITY OF SECTIONS)

002. INCORPORATION BY REFERENCE.

- 01. Incorporated Documents.** These rules incorporate by reference the following: (3-23-22)
- a.** The full text of 38 CFR 38.620, dated July 1, 2001. (3-23-22)
 - b.** 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-23-22)
 - c.** 38 CFR 39.5(d), dated July 1, 2008. (3-23-22)

~~**02. Document Availability.** Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (3-23-22)~~

003. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Administrator.** The Administrator of the Idaho Division of Veterans Services or his designee. (3-23-22)
- 02. Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. (3-23-22)
- 03. Armed Forces Member.** A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 CFR 38.620 and 38 U.S.C. Section 2402. (3-23-22)
- 04. Cemetery.** Idaho State Veterans Cemeteries authorized pursuant to Section 65-108, Idaho Code. (3-23-22)
- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (3-23-22)
- 06. Cremains.** Cremated human remains. (3-23-22)
- ~~**07. Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. (3-23-22)~~
- 087. Disinterment.** The removal of human remains from their place of interment. (3-23-22)

- ~~098.~~ **Division.** The Idaho Division of Veterans Services. (3-23-22)
- ~~109.~~ **Interment.** The disposition of human remains by burial or the placement of cremains in a grave plot or in any location designated by the Administrator for use as a permanent location of cremains. (3-23-22)
- ~~110.~~ **Qualified Person.** A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 CFR 38.620 and 38 U.S.C. Section 2402 and is not prohibited from being interred by 38 CFR 39.10(b); or a member or former member of the reserve component of the armed forces of the United States; the reserve officers training corps of the United States; or members of the Army National Guard or Air National Guard who completed at least one term of enlistment, or officers who completed at least four years of service. (~~3-23-22~~)()
- ~~121.~~ **Reinterment.** The interment of previously interred human remains. (3-23-22)
- ~~132.~~ **Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (3-23-22)
- ~~143.~~ **USDVA.** The United States Department of Veterans Affairs. (3-23-22)

(BREAK IN CONTINUITY OF SECTIONS)

024. FEES FOR INTERMENT, DISINTERMENT, REINTERMENT, AND MEMORIAL.

The Administrator shall charge the following fees: (3-23-22)

- 01. Interment.** (3-23-22)
- a.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site containing a pre-placed crypt. The Administrator will accept, as full payment, the amount of reimbursement by the USDVA to the Division for opening and closing an interment site containing a pre-placed crypt for a qualified veteran persons eligible for USDVA reimbursement. (~~3-23-22~~)()
- b.** ~~In An~~ additional to the fee charged under Paragraph 024.01.a. of this rule, the Administrator shall charge a fee of seven hundred dollars (\$700) for preparation of a casket burial at an interment site not containing a pre-placed crypt. (~~3-23-22~~)()
- c.** For interments ineligible for a USDVA provided marker, the Administrator shall charge: ()
- i.** \$400 for the cost of a Casket/Upright Marker; or ()
- ii.** \$250 for all other Interment/Memorial Marker types. ()
- 02. Disinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site. The expenses of removal, transportation and reinterment of remains, and the expenses of removal, transportation and reinstallation of the grave marker, if any, shall be paid by the applicant for disinterment. (3-23-22)
- 03. Reinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site for reinterment. The expenses of reinterment of remains and reinstallation of the grave marker, if any, shall be paid by the applicant for reinterment. (3-23-22)
- 04. Memorial Marker.** A fee of two hundred fifty dollars (~~\$200~~250) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate an eligible deceased Veteran a qualified person whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. (~~3-23-22~~)()

(BREAK IN CONTINUITY OF SECTIONS)

040. MEMORIALS AND DONATIONS.

01. Flowers and Grave Decorations. The Administrator will post the requirements for natural and artificial flowers and other grave decorations in the cemetery. Cemetery personnel may remove and discard grave decorations that fail to comply with the posted requirements or that are faded, wilted, tattered or worn. (3-23-22)

02. Plaques, Statues, and Other Memorials. The Administrator may approve plaques, statues, and other memorials to commemorate events, units, individuals, groups, and organizations. Persons wishing to install such memorials at their own cost may submit an application on a form prescribed by the Administrator. Memorials approved by the Administrator are considered donations to the cemetery. (3-23-22)

03. Grave Markers. Grave markers issued by the USDVA are approved as follows: (3-23-22)

a. Graves – Upright granite markers. (3-23-22)

b. Interments in an area reserved for the interment of cremains in the soil – Flush granite markers. (3-23-22)

c. Interment of cremains in a structure reserved for the interment of cremains – Granite niche markers. (3-23-22)

~~**04. Donations and Gifts.** The Administrator may accept gifts and donations to the Veterans Cemetery Maintenance Fund established pursuant to Section 65-107, Idaho Code. (3-23-22)~~

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE
50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-1004 and 20-1005, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November 1, 2023, Idaho Administrative Bulletin, [Vol. 23-11, pages 97-118](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mary Schoeler (208) 334-2520.

DATED this 30th day of November, 2023.

Ashley Dowell
Executive Director
3056 Elder St.
Boise, ID 83705
(208) 334-2520 phone
(208) 334-3501 Fax

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 20-1004 and 20-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with the [Zero-Based Regulation E. O. 2020-01](#), the goal of this rulemaking is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges associated with this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 6, 2023, Idaho Administrative Bulletin, [23-9 pages 626-627](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents incorporated by reference in this chapter of rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Schoeler 208-334-2520.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 22, 2023.

DATED this 5th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 50-0101-2301

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-1004, Idaho Code, which provides that the Idaho Commission of Pardons and Parole (hereinafter Commission) has the power to establish rules in compliance with Title 67, Chapter 52, Idaho Code. ()

001. SCOPE.

The rules govern parole, pardons, firearm rights restoration, remission of fines, and commutations for the state of Idaho; and other matters within the authority of the Commission. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Absconder. An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. ()

02. Commission Warrant. Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. ()

03. Commissioner. A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, pardons, commutations, remission of fines, and firearm rights restoration. ()

04. Commutation. Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Sections 20-1016 and 20-1012, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor, as required by law, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. ()

05. Concurrent Sentence. Sentence served at the same time as another. ()

06. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. ()

07. Detainer. A document authorizing the detention of an offender in custody for a parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. ()

08. Determinate Sentence. Fixed portion of the sentence when an offender is not eligible for release on parole. ()

09. Dispositional Hearing. A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. ()

10. Executive Session. Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-1003, Idaho Code. ()

11. File or Case Review. Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. ()

12. Full Term Release Date. The date an offender completes the term of sentence. ()

13. Hearing. The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. ()

- 14. Hearing Session/Session.** A series of hearings conducted by the Commission. ()
- 15. Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. ()
- 16. Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. ()
- 17. Pardon.** Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Section 20-1016, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor as required by law, which allows for sparing the applicant from punishment for a crime, removing any other effects, penalties, or disabilities that the conviction carries or stem from that conviction, and restoring the applicant's civil rights. ()
- 18. Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. ()
- 19. Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. ()
- 20. Preliminary Hearing.** A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. ()
- 21. Risk Assessment.** Validated tool developed to determine risk of recidivating based on offender criminogenic needs. ()
- 22. Respite.** The temporary suspension of the execution of a sentence other than death until the next session of the Commission. ()
- 23. Reprieve.** The temporary suspension of the execution of a sentence of death until the next session of the Commission. ()
- 24. Supervising Authority.** The agency responsible for community supervision of parolees which is Idaho Department of Correction. ()

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the Commission. The Commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and Idaho Code. ()

101. HEARINGS.

- 01. Conduct of Hearings.** All hearings of the Commission will be conducted in accordance with the open meeting law as provided in Chapter 2, Title 74, Idaho Code, and as modified by Section 20-1003, Idaho Code. ()
- 02. Deliberations.** Receipt and exchange of information or opinion relating to a decision concerning the granting, revoking, reinstating, or denial of parole, or related decisions, to include commutations, pardons, remission of fines and fees and restoration of firearm rights. ()

102. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. ()

a. Summary minutes of individual hearings and case reviews constitute the official record of the hearing or case review. ()

02. Minutes of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next business meeting. The summary minutes as approved by the Commissioners will be maintained by the Commission. ()

103. PREVIOUS DECISIONS.

The Commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The Executive Director may bring forward any case determined to need review before the next hearing session. ()

104. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Staff. ()

a. The Commission has delegated to the Executive Director the authority to approve recommended conditions of parole following the hearing process, allow for emergency suspension of a condition at the request of the Department of Correction, review Disciplinary Offense Reports and take action by executive decision, issue Commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, firearms rights restoration, and remissions of fines. The Executive Director assumes all authority and duties as may be delegated by the Commission and the governor. ()

02. Service of Process on Commissioners or Commission Staff. All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure. ()

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. ()

a. A schedule of Commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances. ()

02. Location of Hearings. ()

a. The Executive Director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the Commission's control, it may be necessary to change the location and date of a hearing or hearing session. ()

b. It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. ()

03. Interview Method. For parole hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearm rights hearings, an interview may be conducted face-to-face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the Executive Director. ()

a. The Commission will determine if it will conduct another hearing or make a decision based upon the report. ()

04. Interview/Hearing. The subject of the interview/hearing is required to be present at a scheduled interview/hearing, unless presence is excused by the Commission or except as provided below. ()

a. Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the “Inmate Refusal to Participate in Parole Interview/Hearing Process” form and state the reason for not participating to the Commission. A decision will be made by the Commission based upon available information. ()

b. Parole Violation Hearing. The parolee is required to be present at the violation hearing, unless waived by the parolee as explained in Rule 400.06.f. ()

c. Medical Parole. the Commission may make such an appearance mandatory or may make a final decision based on information available. ()

05. Witnesses and Documents. The Commission allows for the participation of attorneys, supporters of the offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee. ()

a. Persons who want to testify at a hearing must notify the Commission staff five (5) days in advance of the scheduled hearing. Minors will not be allowed to attend, or testify at, the hearings without prior approval of the Executive Director. ()

b. All written documents and letters must be submitted seven (7) days in advance of the scheduled hearing; other documents may be allowed by the presiding Commissioners or the Executive Director. ()

c. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The Commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the Commission. Victims will be allowed to testify. All persons who testify will direct their comments to the Commission. Persons will keep their comments relevant to the proceedings. ()

d. Any communication outside the hearing process directed to a Commissioner is prohibited. Communication from any person concerning a hearing, a decision, Commission practice, or to relay a concern, must be forwarded to the Executive Director. ()

06. Recusal by Commissioner. It is the responsibility of a Commissioner who has personal knowledge of a case or other conflict to decide whether to recuse himself from participating in deliberations and voting. The Commissioner must inform the Executive Director of the potential conflict and recusal. ()

07. Decisions. ()

a. Any decision of the full Commission requires a majority vote of four (4) Commissioners, except as provided by Section 20-1002, Idaho Code. ()

i. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be continued and made by the full Commission, pursuant to Section 20-1002, Idaho Code. ()

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. ()

c. In the case of a review without a Commission hearing, the decision will be published within a

reasonable time on the Commission website and the offender will be notified via their case manager. ()

08. Rules of Conduct at Hearings. ()

a. All persons attending any hearing will conduct themselves in a manner that does not disrupt the proceedings or they may be removed from the hearing. ()

b. All persons attending a hearing must abide by security policies and pertinent statutes of the facility where the hearing is being held, including being subject to search. The number of witnesses allowed in the hearing room will follow the security policies of the facility. ()

c. Audio recording or video recording of any hearing is prohibited unless allowed at the discretion of the Commission or the Executive Director, to include placement, manner, and type of equipment. ()

i. Media interviews with offenders, witnesses, victims, Commission, or staff will not be allowed during the hearing process. The Commission is not responsible for arranging interviews with persons other than the Commission or its staff. Interviews are not allowed without the express consent of the individual. ()

09. Review of Respites and Reprieves Granted by the Governor. ()

a. Approval of Respite or Reprieve. If the Governor approves a petition for a respite or reprieve, the Commission will review the respite or reprieve at the next regularly scheduled session of the full Commission. At that time, the Commission shall determine the respite or reprieve is no longer appropriate or continue the respite or reprieve until the matter can be scheduled for a commutation or pardon hearing as outlined in these rules. ()

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Consideration. ()

a. The Commission may release an offender to parole on or after the date of parole eligibility, or not at all. ()

b. Parole consideration is determined by the individual merits of each case. ()

c. Parole decisions will consider factors to include, but not limited to: ()

i. Seriousness of and aggravating factors involved in the crime. ()

ii. Mitigating factors involved in the crime or related to the offender's circumstances. ()

iii. Prior criminal history of the offender. ()

iv. Failure or success of past probation and parole. ()

v. Institutional history to include overall behavior, involvement in programs, jobs, custody level at time of the hearing, and disciplinary and corrective action. ()

vi. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. ()

vii. Information or reports regarding physical or psychological condition. ()

viii. The strength and stability of the proposed parole plan, including adequate home placement and employment. ()

- ix. Outcome of a validated risk and needs assessment. ()

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted. ()

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction. The month and year of the initial parole hearing will be established based upon the sentence calculation. ()

i. In cases where an offender is serving both a court-ordered retained jurisdiction period and a current sentence of imprisonment, the primary review will not be conducted on the imprisonment case until the court-retained jurisdiction case has been concluded. ()

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary review will not be conducted. ()

iii. In cases with specified fixed terms, the initial hearing will be scheduled approximately six (6) months prior to the offender's parole eligibility date. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. ()

iv. If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any new commitments, changes in sentence calculation, and the time to conduct an interview and report. ()

v. If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled six (6) months from the month the Commission was notified of the commitment. ()

03. General Conditions of Parole. The Commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and signed by the parolee indicating the parolee's understanding of the conditions of parole. Conditions of parole include: ()

a. The parolee is required to enter into and comply with an agreement of supervision with the Idaho Department of Correction. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the Board. ()

b. The parolee will go directly to the destination approved by the Commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the Commission staff. ()

c. The parolee will: ()

i. Support dependents to the best of parolee's ability. ()

d. The parolee must report to the assigned parole officer as instructed. ()

e. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee who is unavailable, communication will be directed to the district section supervisor. ()

f. The parolee will: ()

i. Obey all municipal, county, state, and federal laws. ()

ii. Not engage in conduct that is, or may be, harmful to himself or others. ()

iii. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle,

- etc., any type of firearm for whatever purpose. ()
- iv. Not have in the parolee’s control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. ()
- g. The parolee will: ()
- i. Abstain from use of alcoholic beverages. ()
- ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. ()
- iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee’s expense. ()
- iv. Participate in treatment programs as specified by the Commission or ordered by the parole officer. ()
- h. A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by the supervisory authority or at the direction of the Commission, and the parolee waives the constitutional right to be free from such searches. ()
- i. The parolee is fully advised that written permission is required to: ()
- i. Willfully change employment and must work diligently in a lawful occupation or a program approved by the supervising officer; ()
- ii. Willfully change residence; or ()
- iii. Leave the assigned district. ()
- j. The parolee will not abscond from supervision. ()
- k. Parolee will waive all rights relating to extradition proceedings if taken into custody outside the State of Idaho for failing to comply with conditions of parole and will freely and voluntarily return to the State of Idaho to answer the allegations of parole violations. ()
- 04. Special Conditions of Parole.** ()
- a. In addition to general conditions of parole, the Commission may add special conditions of parole appropriate to the individual case. ()
- b. The Commission delegates authority to the Executive Director to add additional special conditions and to allow for emergency suspension of a condition at the request of the Department of Correction. ()
- 05. Medical Parole.** In addition to Section 20-1006, Idaho Code, the Commission will accept petitions for medical parole from the offender or DOC personnel. ()
- 06. Discharge from Parole.** No parole discharge shall be granted if a Commission warrant was issued before the full-term release date. ()
- 07. Detainers.** ()
- a. The Commission may grant a parole to any county, state, or federal detainer that has been lodged against an offender. ()

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to Commission staff or the supervising authority. ()

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must report to the nearest Idaho probation and parole office within five (5) days of release. The parolee must abide by all regular rules of parole and any special conditions ordered by the Commission. ()

b. The Commission may grant an offender parole to a federal immigration detainer for deportation proceedings. ()

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the nearest Idaho probation and parole office within five (5) days of release. ()

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered failure to obey the law and is in violation of the parole contract. ()

08. Miscellaneous File Review. A miscellaneous file review request may be submitted by the supervising authority to request modification of a special condition of parole or request permission for international travel. ()

09. Interstate Compact. ()

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. ()

b. The bond required by Section 20-1005(3) Idaho Code is five hundred dollars (\$500). ()

i. The bond must be posted at the Commission office by cashier check, money order, or online payment only. ()

ii. Failure to successfully complete parole is grounds for forfeiture of the bond. ()

iii. Upon successful completion or discharge of parole without violation, the amount of the bond may be returned to payee less an amount of ninety-five dollars (\$95) for administrative costs. ()

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. ()

251. -- 299. (RESERVED)

300. VICTIMS.

01. Notice of Victim Rights. The Commission will advise victims of their constitutional and statutory rights at Parole Commission proceedings. The Commission will exercise all due diligence to notify victims of their rights. ()

02. Testimony. The victim is invited to attend all hearings, except executive sessions, pertinent to the case and to provide testimony. Testimony may be provided verbally in the hearing or in writing prior to the hearing. ()

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. ()

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment or maintenance and care plan, as well as treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ()

b. All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside. ()

02. Tentative Parole Dates. All parole release dates granted by the Commission are tentative. ()

a. The parole plan must be approved before the actual release date can be set to allow time for processing the release. ()

b. The Commission may reconsider its decision, and void the tentative parole date if the Commission receives information that was not available at the time of the hearing or the offender has disciplinary problems following the parole hearing. ()

03. Contract. Prior to release to parole, the offender must sign a contract with the Commission and acknowledge all general and special conditions of parole. ()

a. The parolee will be issued reporting instructions that will include contact information for the supervising office. ()

351. -- 399. (RESERVED)

400. PAROLE DISPOSITION PROCESS.

01. Initiated. The parole disposition process is initiated by a written or verbal report describing the conditions of parole that are alleged to have been violated. ()

02. Warrants. ()

a. A supervising authority may issue an agent's warrant to authorize local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. ()

b. After receipt of a report of violation, a Commission warrant may be issued by the Executive Director or by a member or members of the Commission. There is no bond on any warrant issued pursuant to Section 20-1007, Idaho Code and issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. Any time a parolee is considered to be a fugitive from justice will not be counted towards the time on parole or as part of the sentence. ()

i. If the location of the offender is unknown, the warrant will be entered into National Crime Information Center or other law enforcement database and will designate from which states the Commission will extradite the offender once arrested. At any time the Executive Director or designee may change the area of extradition. ()

ii. If an offender is being held in custody on new charges in a state outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. The time limits prescribed by law for service of the factual allegations of the violation of the conditions of parole will begin on the date the holding facility notifies the Commission either the warrant has been served or is notified the offender is available for return to Idaho, whichever is earlier. ()

iii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant. ()

03. Notice of Hearing Rights. ()

a. Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to a fair and impartial hearing of the factual allegations of violation of the conditions of parole. ()

b. Any notice entitled to a parolee arrested by Commission warrant will include written notice of the date, time, and location of any and all public hearings involved in the disposition process. ()

04. Witnesses. The accusing parole officer or alleged parole violator may present witnesses in support or defense of the allegations of parole violation. ()

a. The Commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the Commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, email, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. However, it is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. ()

b. If it is determined by the hearing officer or the Executive Director that the identification of an informant or the personal appearance of a witness would subject such person to potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination. ()

05. Attorney. The alleged parole violator may utilize the services of an attorney at any public hearing conducted during the disposition process. ()

a. An attorney will be paid at the alleged parole violator's expense. ()

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the Commission office to be notified of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are subject to disclosure according to the public records act. ()

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or designee will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator does not understand the proceedings and is otherwise incapable of representing himself. ()

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall: ()

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. ()

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. ()

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. ()

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. ()

06. Violation and Disposition Hearings. The hearing officer or Executive Director will determine the

location of all hearings. The parolee is required to be present at the violation or disposition hearing, unless waived by the parolee. ()

a. Violation Hearings. ()

i. Non-technical violations. If the alleged parole violator is accused of violation of parole by absconding supervision or being convicted of a felony or misdemeanor offense, the subject is not entitled to a preliminary hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the report of violation. ()

ii. Technical violations. If the alleged parole violator is accused of a violation of parole other than by absconding supervision or being convicted of a felony or misdemeanor offense the subject is entitled to a preliminary hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the copy of the report of violation. ()

iii. Preliminary hearing. A technical parole violator under Sections 20-1008(1) and 20-1009(1) is entitled to a preliminary hearing to establish whether there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the Executive Director. The alleged parole violator is entitled to a written decision within a reasonable time following the preliminary hearing. If it is determined at the preliminary hearing that there is no probable cause to support the allegations of violation of the conditions of parole, the parolee will be released to continue parole. ()

iv. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The Executive Director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the Executive Director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing under Section 20-1009(1) may not be possible if charged and arrested in a state other than Idaho. ()

v. Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence of the alleged parole violator and may dismiss some or all allegations. ()

b. The parolee shall have the right to appear at a violation hearing and respond to the allegations of violation of the conditions of parole, present witnesses, and present evidence. ()

c. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based unless it would subject such person to potential risk or harm as determined by the hearing officer. ()

d. The alleged parole violator is entitled to a verbal or written decision within twenty (20) days. When a verbal decision has been rendered at the conclusion of the hearing, such finding must be noted in the hearing officer's report. ()

i. Prior to a disposition hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. ()

e. Disposition Hearing. If finding of guilt was made on one (1) or more of the violations, the Commission will consider whether to reinstate the offender on parole on the same or modified conditions, or to revoke parole. The Commission will consider all options available and will state its reasoning if parole is revoked. The type of violations raised in the allegations and recommendations will determine the type of disposition hearing available to the alleged parole violator. ()

f. Absentia Hearing. The Commission can hold a disposition hearing without the alleged parole violator's appearance if the alleged parole violator has signed the proper document waiving the right to appear before the Commission, and the Commission accepts such a waiver. ()

07. Miscellaneous Hearing Information. ()

a. The Commission, through the Executive Director, shall designate the county, state, or other facility where the alleged parole violator shall be held. ()

b. The alleged parole violator can request a continuance of any hearing. The hearing officer, Executive Director, or the Commission will determine if the continuance will be granted. If a continuance is granted at the alleged parole violator's request, said request will constitute a waiver of any and all time limits involved. ()

08. Credit of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on the agent's warrant or Commission warrant is not credited toward the sentence unless the Commission, in their discretion, chooses to credit the time in whole or in part per Idaho Code 20-1007. ()

a. Any time the offender is incarcerated on a parole agent's warrant and/or a Commission warrant will be credited toward the sentence, including discretionary jail time. ()

b. The offender will not receive credit for incarceration time if the incarceration was for a new crime and a Commission warrant was not served. ()

c. The offender must provide the hearing officer or the Executive Director with dates of incarceration and the location of the incarceration. ()

401. -- 449. (RESERVED)

450. COMMUTATIONS.

A Commutation may be considered for a person convicted of any misdemeanor or felony crime to modify a sentence imposed by the sentencing jurisdiction. ()

01. Petition. A petition must be submitted to initiate the process. Only forms approved by the Commission will be accepted and must be completed correctly per the instructions on the form. ()

a. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. ()

i. Change a consecutive sentence to concurrent. ()

ii. Reduce the maximum length of sentence. ()

iii. Reduce the minimum fixed term of a sentence. ()

iv. Change a fixed sentence to indeterminate. ()

v. Change a sentence in any other manner not described. ()

b. The Commission may consider one (1) application from any one (1) person in any twelve (12) month period from the date of denial. ()

c. Petitions may be considered at any time by the Commission but are usually scheduled for consideration in the quarterly sessions in January, April, July, and October. ()

d. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. ()

e. Review or deliberation on the petition by the Commission will be conducted in executive session.

- ()
- f. Any petition may be continued for additional information or for further consideration. ()
 - g. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. ()
 - h. An alleged parole violator is not eligible to file a petition until the violation has been adjudicated. ()
 - i. The Commission will not consider a commutation for early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-1012, Idaho Code. ()
 - i. The Commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to full term release date has been served on parole; or until ten (10) years have been served on parole on a life sentence for any crime. ()
 - ii. A parole officer, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in this section. ()
 - iii. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge from parole after one (1) year for any crime. ()
- 02. Commutation Hearing.** The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. ()
- a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()
 - b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. ()
 - c. Victims of the offender will be notified when a hearing is scheduled. ()
 - d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()
 - i. The Commission shall make such appearance mandatory, or may deny the commutation. ()
 - e. The decision and supporting documents regarding a commutation will be filed with the Secretary of State and the Executive Director will provide all notice that a commutation is granted consistent with Section 20-1018, Idaho Code. ()
- 03. Death Sentence.** ()
- a. Exceptions to the commutation petition page limit may be made by the Executive Director in cases of offenders under sentence of death. ()
 - b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. ()
 - c. Commutation petitions must be initiated by the petitioner or his legal counsel. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. ()
 - d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. ()

451. -- 499. (RESERVED)

500. SELF-INITIATED PAROLE RECONSIDERATION.

01. Petition. An incarcerated offender making a request for reconsideration of parole denial must initiate the process by submitting an application. ()

a. The only acceptable form is the one provided by the Commission, and it must be signed by the offender and Department of Correction case manager. ()

b. The petition must be typed and completed correctly, per the instructions on the form, or it will not be considered. ()

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. The offender must have had no disciplinary issues in the year prior to submitting the petition. ()

d. The Commission will consider one (1) application from the offender who was denied parole one (1) year after the initial decision. After the initial SIPR is heard, the Commission will consider applications once per year from the date of the initial SIPR denial. ()

e. Petitions must be received no later than the first day of the month prior to the next month's hearing session. ()

f. Review or deliberation on the petition by the Commission will be conducted in executive session. ()

g. Any petition may be continued for additional information or for further consideration. ()

h. The petitioner will be notified of the decision. ()

i. The petition is limited to four (4) pages; the petition will not be considered if the petition exceeds this number. ()

02. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. ()

501. -- 549. (RESERVED)

550. PARDON.

A pardon may be considered for a person convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. ()

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. ()

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than five (5) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than ten (10) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

c. In addition to the provisions of (a) and (b), applications for pardon for vehicular manslaughter pursuant to Section 18-4006(3)(b), Idaho Code or driving under the influence, including any violation of Sections 18-8004, 18-8004C, 18-8005 or 18-8006, Idaho Code, may be submitted for consideration no sooner than fifteen (15)

years after that date which the applicant pled guilty to or was found guilty of such a crime. ()

d. A pardon application will not be considered while an offender is incarcerated or on supervision. ()

e. The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()

02. Application. A pardon application can be obtained from the Commission office or on the Commission website. ()

a. The application must be completed and returned to the Commission office. ()

i. The completed application must include the reasons why the pardon is requested. ()

ii. The applicant may attach letters of recommendation or other documents to support the request. ()

iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. ()

iv. A pardon may be requested only once during a twelve-month (12) period from the date of denial unless otherwise stated by the Commission. ()

v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()

b. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: ()

i. A criminal records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. ()

ii. The applicant's employment history since discharge from supervision or incarceration. ()

iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()

iv. The applicant's employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. ()

v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. ()

vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. ()

03. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. ()

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()

c. Victims of the offender will be notified in writing when a hearing is scheduled. ()

d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()

i. The Commission shall make such appearance mandatory, or may deny the pardon. ()

e. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()

f. The decision and supporting documents regarding a pardon will be filed with the Secretary of State consistent with Section 20-1018, Idaho Code. ()

551. RESTORATION OF FIREARMS RIGHTS PURSUANT TO SECTION 18-310, IDAHO CODE.

01. General. Any restoration pursuant to Section 18-310, Idaho Code is not a pardon for the conviction of a crime, nor is the applicant's criminal record expunged. ()

02. Application. An application may be obtained from the Commission office or on the Commission website. The application must be original, in writing and returned to the Commission office. ()

a. All court convictions, judgment orders, including any dismissal documents, as well as police reports related to said convictions must accompany the application. ()

b. An application may be submitted once every twelve (12) months from the date of denial. ()

c. Review or deliberation on the petition will be conducted in executive session. ()

d. The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. ()

e. No applications will be considered for individuals who are incarcerated or on supervision. ()

f. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()

g. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report shall include, but not be limited to, the following: ()

i. A criminal records check will be conducted to include any law enforcement contact since release from supervision or incarceration. ()

ii. The applicant's employment history since the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()

iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()

iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. ()

v. Confirmation that all restitution and fines as ordered by the sentencing court have been paid. ()

vi. An interview with the applicant may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. ()

- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
- a.** If a hearing is scheduled, the Commission will determine the date of the hearing. ()
- b.** Any hearing may be continued for additional information. ()
- c.** Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()
- i.** The Commission shall make such appearance mandatory or may deny the restoration of firearm rights. ()
- d.** The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()

552. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-1004, IDAHO CODE.

- 01. Request.** An application for remission of fine or penalty must be made to the Commission. The application must be in writing and outline the reasons action is requested. ()
- a.** The applicant must submit a certified copy of the judgment or order assessing said fine or penalty. ()
- 02. Review.** The Commission will review the application to remit a fine or penalty. ()
- a.** The Commission will review such application on a month designated as a quarterly session. The review will be conducted by the full Commission. ()
- b.** The Commission will conduct such review in executive session. ()
- c.** Any application may be continued for further consideration or additional information. ()
- d.** The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
- a.** If a hearing is scheduled, the Commission will determine the date of the hearing. ()
- b.** If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()
- c.** A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()
- d.** Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. ()
- i.** The Commission shall make such appearance mandatory or may deny the remission of fine or penalty. ()
- ii.** The Commission may continue the hearing to a later date for any reason. ()
- 04. Satisfaction of Judgment.** If the Commission determines that such fine or penalty is to be

remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. The decision and supporting documents regarding a remission of fine or penalty will be filed with the Secretary of State consistent with Section 20-1018 Idaho Code.

()

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-1014, IDAHO CODE.

01. Governors Authorization. Subject to the terms of a treaty and on behalf of the state of Idaho, the Governor has authorized the Commission to consent to transfers or exchanges of offenders and take any other action necessary to initiate the participation of the state in such treaty.

()

02. Request for Transfer. An offender may request a transfer to a foreign county when the offender meets the requirements enumerated below. The Commission will receive the request and relevant documents from the Department of Correction. The Commission may request additional information from the offender, any victims, the Department, or any other source the Commission deems appropriate.

()

a. The offender must be a citizen or national of the foreign country. ()

b. The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. ()

c. The offender must not be serving a life sentence. ()

d. The offender cannot be less than two (2) years from his parole eligibility date. ()

e. The offender must meet the Department of Justice's guidelines for international transfer applications. ()

03. Hearing. The full Commission may review a transfer request that meets all the requirements under the law in a hearing. ()

a. The Commission may require the offender's appearance or may make a final decision based upon the materials with the request and other information which is available. The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, or to have any particular evidence considered. ()

b. The Commission may continue the hearing to a later date for any reason. The Commission will schedule the application for review during a scheduled hearing session at a time and place of its choosing. ()

04. Decision. ()

a. The offender is not entitled to appeal the Commission's decision. ()

b. The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. ()

05. Approval of Transfer Request. If the Commission approves the transfer request, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. ()

801. -- 999. (RESERVED)

[Agency redlined courtesy copy]

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-1004, Idaho Code, which provides that the Idaho Commission of Pardons and Parole (hereinafter Commission) has the power to establish rules in compliance with Title 67, Chapter 52, Idaho Code. (3-23-22)()

001. SCOPE.

The rules govern parole, pardons, firearm rights restoration, remission of fines, and commutations for the state of Idaho; and other matters within the authority of the Commission. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Absconder. An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. ()

02. Commission Warrant. Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. ()

03. Commissioner. A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, pardons, commutations, remission of fines, and firearm rights restoration. ()

04. Commutation. Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Sections 20-1016 and 20-1012, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor, as required by law, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. ()

05. Concurrent Sentence. Sentence served at the same time as another. ()

06. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. ()

07. Detainer. A document authorizing the detention of an offender in custody for a parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. ()

08. Determinate Sentence. Fixed portion of the sentence when an offender is not eligible for release on parole. ()

09. Dispositional Hearing. A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. ()

10. Executive Session. Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-1003, Idaho Code. ()

11. File or Case Review. Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. ()

12. Full Term Release Date. The date an offender completes the term of sentence. ()

13. Hearing. The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. ()

14. Hearing Session/Session. A series of hearings conducted by the Commission. ()

15. Indeterminate Sentence. Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. ()

16. Offender. A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. ()

17. Pardon. Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Section 20-1016, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor as required by law, which allows for sparing the applicant from punishment for a crime, removing any other effects, penalties, or disabilities that the conviction carries or stem from that conviction, and restoring the applicant's civil rights. ()

18. Parole. Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. ()

19. Parole Eligibility Date. The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. ()

20. Preliminary Hearing. A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. ()

21. Risk Assessment. Validated tool developed to determine risk of recidivating based on offender criminogenic needs. ()

22. Respite. The temporary suspension of the execution of a sentence other than death until the next session of the Commission. ()

23. Reprieve. The temporary suspension of the execution of a sentence of death until the next session of the Commission. ()

24. Supervising Authority. The agency responsible for community supervision of parolees which is Idaho Department of Correction. ()

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the Commission. The Commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and Idaho Code. ()

101. HEARINGS.

01. Conduct of Hearings. All hearings of the Commission will be conducted in accordance with the open meeting law as provided in Chapter 2, Title 74, Idaho Code, and as modified by Section 20-1003, Idaho Code. ~~Each Commissioner will have an opportunity to ask questions or provide comments, or both. The Executive Director or Commission staff may provide information during the hearing or ask questions.~~ (3-23-22)()

02. Deliberations. Receipt and exchange of information or opinion relating to a decision concerning

the granting, revoking, reinstating, or denial of parole, or related decisions, to include commutations, pardons, remission of fines and fees and restoration of firearm rights. ~~Deliberations will be made in executive session. Votes of individual members will not be made public.~~ (3-23-22)()

102. HEARING SESSIONS.

~~The Executive Director or designee will schedule hearing sessions according to the number of hearings required for the specific month.~~ (3-23-22)

103. BUSINESS MEETINGS.

~~The Commission schedules a business meeting at least quarterly or at the call of the Executive Director and notice of such meetings must comply with the open meeting law requirements. Such meeting may be cancelled at the vote of a majority of the Commission or by the Executive Director if the scheduled business cannot be conducted.~~ (3-23-22)

104. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. ()

~~a. Summary minutes of individual hearings and case reviews shall be maintained by the Commission office constitute the official record of the hearing or case review.~~ (3-23-22)()

~~b. Audio recordings of open hearings may be made and may be maintained by the Commission. The recordings will be subject to disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Executive sessions will not be recorded.~~ (3-23-22)

02. Minutes of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next business meeting. The summary minutes as approved by the Commissioners will be maintained by the Commission ~~and published on the Commission's website when the summary minutes are approved.~~ (3-23-22)()

~~**03. Official Record of Hearing or Review.** The official record of a parole hearing or case review will be the summary minutes of that hearing or review. The official record will be maintained by the Commission and subject to public disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code.~~ (3-23-22)

105. PREVIOUS DECISIONS.

The Commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The Executive Director may bring forward any case determined to need review before the next hearing session. ()

106. (RESERVED)

107. APA APPLICABILITY.

~~The Commission has the authority to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act applies to the Commission.~~ (3-23-22)

108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.

~~**01. Decision to Release to Parole.** The Commission has the authority to decide whether or not any offender eligible for parole may be released to parole.~~ (3-23-22)

~~**02. Advisory Commission to Board of Correction.** The Commission may act as the advisory Commission to the board of correction. The Commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201(2), Idaho Code, and other applicable provisions of Idaho law.~~ (3-23-22)

109. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

~~01. Commission Members.~~ The Commission is composed of seven (7) members. (3-23-22)

~~02. Commission Staff.~~ ()

~~a.~~ The Commission has delegated to the Executive Director the authority to approve recommended conditions of parole following the hearing process, allow for emergency suspension of a condition at the request of the Department of Correction, review Disciplinary Offense Reports and take action by executive decision, issue Commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, firearms rights restoration, and remissions of fines. The Executive Director assumes all authority and duties as may be delegated by the Commission and the governor. (3-23-22)()

~~b.~~ The Executive Director assumes all authority and duties as may be delegated by the Commission and the governor. (3-23-22)

03. Service of Process on Commissioners or Commission Staff. All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure. ()

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. ()

~~a.~~ A schedule of Commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances ~~and may not be published earlier. A person may obtain the offender's hearing date by contacting the Commission office or on the commission website at www.pardons.idaho.gov.~~ (3-23-22)()

~~b.~~ The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings and will be published on the Commission website. (3-23-22)

02. Location of Hearings. ()

~~a.~~ The Executive Director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the Commission's control, it may be necessary to change the location and date of a hearing or hearing session. ()

~~b.~~ It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. ()

03. Interview Method. For parole hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearm rights hearings, an interview may be conducted face-to-face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the Executive Director. ~~If an interview is not required, the offender may simply appear before the Commission for a hearing.~~ (3-23-22)()

~~a.~~ An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the Commission. The in-depth investigational report for parole consideration is exempt from public disclosure pursuant to Section 20-1005, Idaho Code. (3-23-22)

~~ba.~~ The Commission will determine if it will conduct another hearing or make a decision based upon the report. ()

~~**04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other.** (3-23-22)~~

~~**a.** A SORA will be prepared for the Commission for all offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-1005, Idaho Code. (3-23-22)~~

~~**b.** The Commission, the Executive Director, or a hearing officer can order any psychological report, evaluation, or assessment for an offender serving a commitment for any crime. (3-23-22)~~

~~**c.** All psychological, SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. (3-23-22)~~

054. Interview/Hearing. The subject of the interview/hearing is required to be present at a scheduled interview/hearing, unless presence is excused by the Commission or except as provided below. ()

a. Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the “Inmate Refusal to Participate in Parole Interview/Hearing Process” form and state the reason for not participating to the Commission. A decision will be made by the Commission based upon available information. ()

b. Parole Violation Hearing. The parolee is required to be present at the violation hearing, unless waived by the parolee as explained in Rule 400.06.f. ()

c. Medical Parole. ~~The offender is encouraged to be present at the hearing;~~ the Commission may make such an appearance mandatory or may make a final decision based on information available. ~~(3-23-22)~~ ()

065. Witnesses and Documents. The Commission allows for the participation of attorneys, supporters of the offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee. ()

a. Persons who want to testify at a hearing must notify the Commission staff five (5) days in advance of the scheduled hearing. Minors will not be allowed to attend, or testify at, the hearings without prior approval of the Executive Director. ()

b. All written documents and letters must be submitted seven (7) days in advance of the scheduled hearing; other documents may be allowed by the presiding Commissioners or the Executive Director. ()

~~**c.** An attorney or others as determined by the Executive Director or Commission may be seated with the offender/parolee at the hearing. (3-23-22)~~

~~**dc.** Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The Commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the Commission. Victims will be allowed to testify. All persons who testify will direct their comments to the Commission. Persons will keep their comments relevant to the proceedings. ()~~

~~**ed.** Any communication outside the hearing process directed to a Commissioner is prohibited. Communication from any person concerning a hearing, a decision, Commission practice, or to relay a concern, must be forwarded to the Executive Director. ()~~

076. Recusal by Commissioner. It is the responsibility of a Commissioner who has personal knowledge of a case or other conflict to decide whether to recuse himself from participating in deliberations and voting. The Commissioner must inform the Executive Director of the potential conflict and recusal. ()

087. Decisions. ()

a. Any decision of the full Commission requires a majority vote of four (4) Commissioners, except as provided by Section 20-1002, Idaho Code. ~~Panels of less than the full commission are identified below.~~ (3-23-22)()

i. ~~Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous. In the event they are not unanimous, then the parole violation disposition decision will be continued and made by the full Commission, pursuant to Section 20-1002, Idaho Code.~~ (3-23-22)

ii. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be continued and made by the full Commission, pursuant to Section 20-1002, Idaho Code. ()

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. ~~The decision may be sent to the offender in writing with specific information/conditions.~~ (3-23-22)()

c. In the case of a review without a Commission hearing, the decision will be published within a reasonable time on the Commission website and the offender will be notified via their case manager. (3-23-22)()

~~d. Any decision made by the Commission may be reconsidered at any time pursuant to Rule 105.~~ (3-23-22)

098. Rules of Conduct at Hearings. ()

a. All persons attending any hearing will conduct themselves in a manner that does not disrupt the proceedings or they may be removed from the hearing. ()

b. All persons attending a hearing must abide by security policies and pertinent statutes of the facility where the hearing is being held, including being subject to search. The number of witnesses allowed in the hearing room will follow the security policies of the facility. ()

c. Audio recording or video recording of any hearing is prohibited unless allowed at the discretion of the Commission or the Executive Director, to include placement, manner, and type of equipment. ()

i. Media interviews with offenders, witnesses, victims, Commission, or staff will not be allowed during the hearing process. The Commission is not responsible for arranging interviews with persons other than the Commission or its staff. Interviews are not allowed without the express consent of the individual. ()

4009. Review of Respites and Reprieves Granted by the Governor. ()

a. Approval of Respite or Reprieve. If the Governor approves a petition for a respite or reprieve, the Commission will review the respite or reprieve at the next regularly scheduled session of the full Commission. At that time, the Commission shall ~~either~~ determine the respite or reprieve is no longer appropriate or continue the respite or reprieve until the matter can be scheduled for a commutation or pardon hearing as outlined in these rules. (3-23-22)()

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Consideration. ()

a. The Commission may release an offender to parole on or after the date of parole eligibility, or not at all. ()

- b. Parole consideration is determined by the individual merits of each case. ()
- c. Parole decisions will consider factors to include, but not limited to: ()
 - i. Seriousness of and aggravating factors involved in the crime. ()
 - ii. Mitigating factors involved in the crime or related to the offender's circumstances. ()
 - iii. Prior criminal history of the offender. ()
 - iv. Failure or success of past probation and parole. ()
 - v. Institutional history to include overall behavior, involvement in programs, jobs, custody level at time of the hearing, and disciplinary and corrective action. ()
 - vi. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. ()
 - vii. Information or reports regarding physical or psychological condition. ()
 - viii. The strength and stability of the proposed parole plan, including adequate home placement and employment. ()
 - ix. Outcome of a validated risk and needs assessment. ()

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted. ()

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction. The month and year of the initial parole hearing will be established based upon the sentence calculation. ()

i. In cases where an offender is serving both a court-ordered retained jurisdiction period and a current sentence of imprisonment, the primary review will not be conducted on the imprisonment case until the court-retained jurisdiction case has been concluded. ()

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary review will not be conducted. ()

iii. In cases with specified fixed terms, the initial hearing will be scheduled approximately six (6) months prior to the offender's parole eligibility date. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. ()

iv. If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any new commitments, changes in sentence calculation, and the time to conduct an interview and report. ()

v. If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled ~~within~~ six (6) months from the month the Commission was notified of the commitment. (3-23-22)()

03. General Conditions of Parole. The Commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and signed by the parolee indicating the parolee's understanding of the conditions of parole. Conditions of parole include: ()

a. The parolee is required to enter into and comply with an agreement of supervision with the Idaho

Department of Correction. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the Board. ()

b. The parolee will go directly to the destination approved by the Commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the Commission staff. ()

c. The parolee will: ()

i. Support dependents to the best of parolee's ability. ()

d. The parolee must report to the assigned parole officer as instructed. ()

e. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee who is unavailable, communication will be directed to the district section supervisor. ()

f. The parolee will: ()

i. Obey all municipal, county, state, and federal laws. ()

ii. Not engage in conduct that is, or may be, harmful to himself or others. ()

iii. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. ()

iv. Not have in the parolee's control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. ()

g. The parolee will: ()

i. Abstain from use of alcoholic beverages. ()

ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. ()

iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee's expense. ()

iv. Participate in treatment programs as specified by the Commission or ordered by the parole officer. ()

h. A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by the supervisory authority or at the direction of the Commission, and the parolee waives the constitutional right to be free from such searches. ()

i. The parolee is fully advised that written permission is required to: ()

i. Willfully change employment and must work diligently in a lawful occupation or a program approved by the supervising officer; ()

ii. Willfully change residence; or ()

iii. Leave the assigned district. ()

j. The parolee will not abscond from supervision. ()

k. Parolee will waive all rights relating to extradition proceedings if taken into custody outside the State of Idaho for failing to comply with conditions of parole and will freely and voluntarily return to the State of Idaho to answer the allegations of parole violations. ()

04. Special Conditions of Parole. ()

a. In addition to general conditions of parole, the Commission may add special conditions of parole appropriate to the individual case. ()

b. The Commission delegates authority to the Executive Director to add additional special conditions and to allow for emergency suspension of a condition at the request of the Department of Correction. ()

05. Medical Parole. ~~The Commission may parole an offender for medical reasons pursuant to Section 20-1006, Idaho Code.~~ In addition to Section 20-1006, Idaho Code, the Commission will accept petitions for medical parole from the offender or DOC personnel. (3-23-22)()

~~a. Consideration will occur when the offender is permanently incapacitated or terminally ill and when the Commission reasonably believes the offender no longer poses a threat to the safety of society.~~ (3-23-22)

~~b. An offender or designated Department of Correction personnel may petition the Commission to consider medical parole.~~ (3-23-22)

06. Discharge from Parole. ~~When the maximum sentence has expired, a final discharge will be issued by the Commission, unless~~ No parole discharge shall be granted if a Commission warrant was issued before the full-term release date. (3-23-22)()

07. Detainers. ()

a. The Commission may grant a parole to any county, state, or federal detainer that has been lodged against an offender. ()

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to Commission staff or the supervising authority. ()

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must report to the nearest Idaho probation and parole office within five (5) days of release. The parolee must abide by all regular rules of parole and any special conditions ordered by the Commission. ()

b. The Commission may grant an offender parole to a federal immigration detainer for deportation proceedings. ()

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the nearest Idaho probation and parole office within five (5) days of release. ()

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered failure to obey the law and is in violation of the parole contract. ()

08. Miscellaneous File Review. A miscellaneous file review request may be submitted by the supervising authority to request modification of a special condition of parole or request permission for international travel. ()

09. Interstate Compact. ()

a. An offender must be eligible for transfer of supervision to another state under the Interstate

Compact and the receiving state must accept the transfer before the offender is released on parole. ()

~~i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the Commission's bond. (3-23-22)~~

~~b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the Commission required by Section 20-1005(3) Idaho Code is five hundred dollars (\$500). (3-23-22)()~~

~~i. The bond must be posted at the Commission office. A by cashier check, money order, or online payment shall be the only acceptable means of posting bond only. (3-23-22)()~~

ii. Failure to successfully complete parole is grounds for forfeiture of the bond. ()

iii. Upon successful completion or discharge of parole without violation, the amount of the bond may be returned to payee less an amount of ninety-five dollars (\$95) for administrative costs. ()

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. ()

251. -- 299. (RESERVED)

300. VICTIMS.

01. Notice of Victim Rights. The Commission will advise victims of their constitutional and statutory rights at Parole Commission proceedings. The Commission will exercise all due diligence to notify victims of their rights. ()

02. Testimony. The victim is invited to attend all hearings, except executive sessions, pertinent to the case and to provide testimony. Testimony may be provided verbally in the hearing or in writing prior to the hearing. ()

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. ()

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment or maintenance and care plan, as well as treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ()

~~**b.** Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. (3-23-22)~~

eb. All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside. ()

02. Tentative Parole Dates. All parole release dates granted by the Commission are tentative. ()

a. The parole plan must be approved before the actual release date can be set to allow time for processing the release. ()

b. The Commission may reconsider its decision, and void the tentative parole date if the Commission

receives information that was not available at the time of the hearing or the offender has disciplinary problems following the parole hearing. ()

03. Contract. Prior to release to parole, the offender must sign a contract with the Commission and acknowledge all general and special conditions of parole. ()

a. The parolee will be issued reporting instructions that will include contact information for the supervising office. ()

351. -- 399. (RESERVED)

400. PAROLE DISPOSITION PROCESS.

01. Initiated. The parole disposition process is initiated by a written or verbal report describing the conditions of parole that are alleged to have been violated. ()

02. Warrants. ()

a. A supervising authority may issue an agent's warrant to authorize local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. ()

b. After receipt of a report of violation, a Commission warrant may be issued by the Executive Director or by a member or members of the Commission. There is no bond ~~on this warrant on any warrant issued pursuant to Section 20-1007, Idaho Code~~ and issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. ~~The Any time that~~ a parolee is considered to be a fugitive from justice will not be counted towards the time on parole or as part of the sentence. (3-23-22)()

~~i. Following arrest on a Commission warrant, the Executive Director or the Commission will decide if the parolee will be released to continue parole.~~ (3-23-22)

ii. If the location of the offender is unknown, the warrant will be entered into National Crime Information Center or other law enforcement database and will designate from which states the Commission will extradite the offender once arrested. At any time the Executive Director or designee may change the area of extradition. ()

iii. If an offender is being held in custody on new charges in a state outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. The time limits prescribed by law for service of the factual allegations of the violation of the conditions of parole will begin on the date the holding facility notifies the Commission either the warrant has been served or is notified the offender is available for return to Idaho, whichever is earlier. ()

~~iv.~~**ii.** If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant. ()

03. Notice of Hearing Rights. ()

a. Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to a fair and impartial hearing of the factual allegations of violation of the conditions of parole. ()

b. ~~The parolee shall be provided pertinent due process including~~ Any notice entitled to a parolee arrested by Commission warrant will include written notice of the date, time, and location of any and all public hearings involved in the disposition process. (3-23-22)()

04. Witnesses. The accusing parole officer or alleged parole violator may present witnesses in support or defense of the allegations of parole violation. ()

a. The Commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the Commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, email, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. However, it is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. ()

b. If it is determined by the hearing officer or the Executive Director that the identification of an informant or the personal appearance of a witness would subject such person to potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination. ()

05. Attorney. The alleged parole violator may utilize the services of an attorney at any public hearing conducted during the disposition process. ()

a. An attorney will be paid at the alleged parole violator's expense. ()

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the Commission office to be notified of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are subject to disclosure according to the public records act. ()

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or designee will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator does not understand the proceedings and is otherwise incapable of representing himself. ()

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall: ()

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. ()

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. ()

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. ()

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. ()

06. Violation and Disposition Hearings. The hearing officer or Executive Director will determine the location of all hearings. The parolee is required to be present at the violation or disposition hearing, unless waived by the ~~offender~~ parolee. (3-23-22)()

a. Violation Hearings. ()

i. Non-technical violations. If the alleged parole violator is accused of violation of parole by absconding supervision or being convicted of a felony or misdemeanor offense, the subject is not entitled to a preliminary hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the report of violation. ()

ii. Technical violations. If the alleged parole violator is accused of a violation of parole other than by absconding supervision or being convicted of a felony or misdemeanor offense the subject is entitled to a preliminary

hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the copy of the report of violation. ()

iii. Preliminary hearing. A technical parole violator under Sections 20-1008(1) and 20-1009(1) is entitled to a preliminary hearing to establish whether there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the Executive Director. The alleged parole violator is entitled to a written decision within a reasonable time following the preliminary hearing. If it is determined at the preliminary hearing that there is no probable cause to support the allegations of violation of the conditions of parole, the parolee will be released to continue parole. ~~(3-23-22)~~()

iv. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The Executive Director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the Executive Director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing under Section 20-1009(1) may not be possible if charged and arrested in a state other than Idaho. ~~(3-23-22)~~()

v. Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence of the alleged parole violator and may dismiss some or all allegations. ~~If a hearing officer is unavailable, the Executive Director will appoint someone to conduct the hearing.~~ ~~(3-23-22)~~()

b. The parolee shall have the right to appear at a violation hearing and respond to the allegations of violation of the conditions of parole, present witnesses, and present evidence. ()

c. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based unless it would subject such person to potential risk or harm as determined by the hearing officer. ()

d. The alleged parole violator is entitled to a verbal or written decision within twenty (20) days. When a verbal decision has been rendered at the conclusion of the hearing, such finding must be noted in the hearing officer's report. ()

i. Prior to a disposition hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. ()

e. **Disposition Hearing.** If finding of guilt was made on one (1) or more of the violations, the Commission will consider whether to reinstate the offender on parole on the same or modified conditions, or to revoke parole. The Commission will consider all options available and will state its reasoning if parole is revoked. The type of violations raised in the allegations and recommendations will determine the type of disposition hearing available to the alleged parole violator. ()

f. Absentia Hearing. The Commission can hold a disposition hearing without the alleged parole violator's appearance if the alleged parole violator has signed the proper document waiving the right to appear before the Commission, and the Commission accepts such a waiver. ()

07. Miscellaneous Hearing Information. ()

a. The Commission, through the Executive Director, shall designate the county, state, or other facility where the alleged parole violator shall be held. ()

b. The alleged parole violator can request a continuance of any hearing. The hearing officer, Executive Director, or the Commission will determine if the continuance will be granted. If a continuance is granted at the alleged parole violator's request, said request will constitute a waiver of any and all time limits involved. ()

08. Credit of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on the agent's warrant or Commission warrant is not credited toward the sentence unless the Commission, in their discretion, chooses to credit the time in whole or in part per Idaho Code 20-1007. ()

a. Any time the offender is incarcerated on a parole agent's warrant and/or a Commission warrant will be credited toward the sentence, including discretionary jail time. ()

b. The offender will not receive credit for incarceration time if the incarceration was for a new crime and a Commission warrant was not served. ()

c. The offender must provide the hearing officer or the Executive Director with dates of incarceration and the location of the incarceration. ()

401. -- 449. (RESERVED)

450. COMMUTATIONS.

A Commutation may be considered for a person convicted of any misdemeanor or felony crime to modify a sentence imposed by the sentencing jurisdiction. ()

01. Petition. A petition must be submitted to initiate the process. Only forms approved by the Commission will be accepted and must be completed correctly per the instructions on the form. ()

a. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. ()

i. Change a consecutive sentence to concurrent. ()

ii. Reduce the maximum length of sentence. ()

iii. Reduce the minimum fixed term of a sentence. ()

iv. Change a fixed sentence to indeterminate. ()

v. Change a sentence in any other manner not described. ()

b. The Commission may consider one (1) application from any one (1) person in any twelve (12) month period from the date of denial. ()

c. Petitions may be considered at any time by the Commission but are usually scheduled for consideration in the quarterly sessions in January, April, July, and October. ()

d. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. ()

e. Review or deliberation on the petition by the Commission will be conducted in executive session. ()

f. Any petition may be continued for additional information or for further consideration. ()

g. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. ()

h. An alleged parole violator is not eligible to file a petition until the violation has been adjudicated. ()

i. The Commission will not consider a commutation for early discharge from parole in any case until

the parolee has served at least one (1) year on parole as outlined in Section 20-1012, Idaho Code. ()

i. The Commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to full term release date has been served on parole; or until ten (10) years have been served on parole on a life sentence for any crime. ()

ii. A parole officer, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in this section. ()

iii. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge from parole after one (1) year for any crime. ()

02. Commutation Hearing. The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. ()

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. ()

c. Victims of the offender will be notified when a hearing is scheduled. ()

d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()

i. The Commission shall make such appearance mandatory, or may deny the commutation. ()

e. The decision and supporting documents regarding a commutation will be filed with the Secretary of State and the Executive Director will provide all notice that a commutation is granted consistent with Section 20-1018, Idaho Code. ()

03. Death Sentence. ()

a. Exceptions to the commutation petition page limit may be made by the Executive Director in cases of offenders under sentence of death. ()

b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. ()

c. Commutation petitions must be initiated by the petitioner or his legal counsel. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. ()

d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. ()

451. -- 499. (RESERVED)

500. SELF-INITIATED PAROLE RECONSIDERATION.

01. Petition. An incarcerated offender making a request for reconsideration of parole denial must initiate the process by submitting an application. ()

a. The only acceptable form is the one provided by the Commission, and it must be signed by the offender and Department of Correction case manager. ()

b. The petition must be typed and completed correctly, per the instructions on the form, or it will not be considered. ()

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. The offender must have had no disciplinary issues in the year prior to ~~submitted~~ submitting the petition. (3-23-22)()

d. The Commission will consider one (1) application from the offender who was denied parole one (1) year after the initial decision. After the initial SIPR is heard, the Commission will consider applications once per year from the date of the initial SIPR denial. ()

e. Petitions must be received no later than the first day of the month prior to the next month's hearing session. ()

f. Review or deliberation on the petition by the Commission will be conducted in executive session. ()

g. Any petition may be continued for additional information or for further consideration. ()

h. The petitioner will be notified of the decision. ()

i. The petition is limited to four (4) pages; the petition will not be considered if the petition exceeds this number. ()

02. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. ()

501. -- 549. (RESERVED)

550. PARDON.

A pardon may be considered for a person convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. ()

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. ()

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than five (5) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than ten (10) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

c. In addition to the provisions of (a) and (b), applications for pardon for vehicular manslaughter pursuant to Section 18-4006(3)(b), Idaho Code or driving under the influence, including any violation of Sections 18-8004, 18-8004C, 18-8005 or 18-8006, Idaho Code, may be submitted for consideration no sooner than fifteen (15) years after that date which the applicant pled guilty to or was found guilty of such a crime. ()

d. A pardon application will not be considered while an offender is incarcerated or on supervision. ()

e. The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()

02. Application. A pardon application can be obtained from the Commission office or on the Commission website. ()

- a. The application must be completed and returned to the Commission office. ()
- i. The completed application must include the reasons why the pardon is requested. ()
- ii. The applicant may attach letters of recommendation or other documents to support the request. ()
- iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. ()
- iv. A pardon may be requested only once during a twelve-month (12) period from the date of denial unless otherwise stated by the Commission. ()
- v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()
- b. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: ()
 - i. A criminal records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. ()
 - ii. The applicant's employment history since discharge from supervision or incarceration. ()
 - iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()
 - iv. The applicant's employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. ()
 - v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. ()
 - vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. ()
 - a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()
 - b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()
 - c. Victims of the offender will be notified in writing when a hearing is scheduled. ()
 - d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()
 - i. The Commission shall make such appearance mandatory, or may deny the pardon. ()
 - e. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()
 - f. The decision and supporting documents regarding a pardon will be filed with the Secretary of State consistent with Section 20-1018, Idaho Code. ()

551. RESTORATION OF FIREARMS RIGHTS PURSUANT TO SECTION 18-310, IDAHO CODE.

01. General. ~~An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(2), Idaho Code. This~~ Any restoration pursuant to Section 18-310, Idaho Code is not a pardon for the conviction of a crime, nor is the applicant's criminal record expunged. (3-23-22)()

02. Application. An application may ~~not be made until five (5) years after the date of final discharge of the crime for which they are requesting restoration of firearm rights~~ be obtained from the Commission office or on the Commission website. The application must be original, in writing and returned to the Commission office. (3-23-22)()

~~a. An application may be obtained from the Commission office or on the Commission website.~~ (3-23-22)

~~b. The application must be the original and returned to the Commission office.~~ (3-23-22)

~~i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code.~~ (3-23-22)

~~ii. The application must be in writing and legible.~~ (3-23-22)

~~iii.a.~~ All court convictions, judgment orders, including any dismissal documents, as well as police reports related to said convictions must accompany the application. ()

~~iv.b.~~ An application may be submitted once every twelve (12) months from the date of denial. ()

~~v. The petition must state the reason for the request.~~ (3-23-22)

~~vi.c.~~ Review or deliberation on the petition will be conducted in executive session. ()

~~vii.d.~~ The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. ()

~~viii.e.~~ No applications will be considered for individuals who are incarcerated or on supervision. ()

f. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()

eg. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report shall include, but not be limited to, the following: ()

i. A criminal records check will be conducted to include any law enforcement contact since release from supervision or incarceration. ()

ii. The applicant's employment history since the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()

iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()

iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. ()

v. Confirmation that all restitution and fines as ordered by the sentencing court have been paid.

- ()
- vi. An interview with the applicant may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
- a. If a hearing is scheduled, the Commission will determine the date of the hearing. ()
- b. Any hearing may be continued for additional information. ()
- c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()
- i. The Commission shall make such appearance mandatory or may deny the restoration of firearm rights. ()
- d. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()
- ~~**04. Authority to Grant.** The Commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code, except as provided therein. (3-23-22)~~
- 552. -- 599. (RESERVED)**
- 600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-1004, IDAHO CODE.**
- 01. Request.** An application for remission of fine or penalty must be made to the Commission. The application must be in writing and outline the reasons action is requested. (3-23-22)()
- ~~a. The application must be in writing. (3-23-22)~~
- ~~b. The application must outline the reasons action is requested to remit such fine or penalty. (3-23-22)~~
- ea.** The applicant must submit a certified copy of the judgment or order assessing said fine or penalty. ()
- 02. Review.** The Commission will review the application to remit a fine or penalty. ()
- a. The Commission will ~~usually~~ review such application on a month designated as a quarterly session. The review will be conducted by the full Commission. (3-23-22)()
- b. The Commission will conduct such review in executive session. ()
- c. Any application may be continued for further consideration or additional information. ()
- d. The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
- a. If a hearing is scheduled, the Commission will determine the date of the hearing. ()
- b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()

d. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. ()

i. The Commission shall make such appearance mandatory or may deny the remission of fine or penalty. ()

ii. The Commission may continue the hearing to a later date for any reason. ()

04. Satisfaction of Judgment. If the Commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. The decision and supporting documents regarding a remission of fine or penalty will be filed with the Secretary of State consistent with Section 20-1018 Idaho Code. ()

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-1014, IDAHO CODE.
~~An offender may be transferred upon request to a country of which the offender is a citizen or national if a treaty is in effect between that country and the United States.~~ (3-23-22)

01. Governors Authorization. Subject to the terms of a treaty and on behalf of the state of Idaho, the Governor has authorized the Commission to consent to transfers or exchanges of offenders and take any other action necessary to initiate the participation of the state in such treaty. ()

02. Request for Transfer. An offender may request a transfer to a foreign country when the offender meets the requirements enumerated below. The Commission will receive the request and relevant documents from the Department of Correction. The Commission may request additional information from the offender, any victims, the Department, or any other source the Commission deems appropriate. ()

a. The offender must be a citizen or national of the foreign country. ()

b. The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. ()

c. The offender must not be serving a life sentence. ()

d. The offender cannot be less than two (2) years from his parole eligibility date. ()

e. The offender must meet the Department of Justice's guidelines for international transfer applications. ()

03. Hearing. The full Commission may review a transfer request that meets all the requirements under the law in a hearing. ()

a. The Commission may require the offender's appearance or may make a final decision based upon the materials with the request and other information which is available. The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, or to have any particular evidence considered. ()

b. The Commission may continue the hearing to a later date for any reason. The Commission will schedule the application for review during a scheduled hearing session at a time and place of its choosing. ()

04. Decision. ()

- a. The offender is not entitled to appeal the Commission’s decision. ()
- b. The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. ()
- 05. Approval of Transfer Request.** If the Commission approves the transfer request, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. ()
- 801. -- 999. (RESERVED)**

IDAPA 62 – OFFICE OF ADMINISTRATIVE HEARINGS

62.01.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE

DOCKET NO. 62-0101-2301 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective on July 1, 2024, after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-5206(3) and 67-5280(2)(c), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rules will simplify, modernize, and replace the existing Idaho Rules of Administrative Procedure of the Attorney General, which govern the conduct of contested cases before Idaho’s administrative agencies.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 773-803](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Chief Administrative Hearing Officer Bryan Nickels at 208-605-4300.

DATED this 2nd day of November, 2023.

Bryan Nickels
Chief Administrative Hearing Officer
Office of Administrative Hearings
816 W. Bannock St., Suite 203 (physical and mailing)
Boise, ID 83702
208-605-4300
general@oah.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5206(3) and 67-5280(2)(c), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rules will simplify, modernize, and replace the existing Idaho Rules of Administrative Procedure of the Attorney General, which govern the conduct of contested cases before Idaho's administrative agencies.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, p. 90](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Chief Administrative Hearing Officer Bryan Nickels at 208-605-4300.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 31st day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 62-0101-2301

62.01.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE

SUBCHAPTER A – GENERAL PROVISIONS AND DEFINITIONS (RULES 0-99)

Rules 0 Through 49 – General Provisions

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Section 67-5206, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. This chapter is titled “Idaho Rules of Administrative Procedure.” ()

02. Scope. Every state agency that conducts “contested cases” as defined by Section 67-5240, Idaho Code, must use these rules unless otherwise required by governing federal or state statute, rule, regulation, or binding state or federal judicial decisional authority. ()

002. DEFINITIONS (RULE 2).

All terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Idaho Administrative Procedure Act (“APA”) within Section 67-5201, Idaho Code, and as otherwise defined below: ()

01. Agency. In addition to the definition in Section 67-5201(2), Idaho Code, reference to the “agency” in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, hearing officer assigned by the Office of Administrative Hearings, or other such presiding officer, as context requires. In turn, reference to the “agency head” means the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. ()

02. Interlocutory Order. Any order issued by a presiding officer or agency head which is neither a preliminary order, a recommended order, nor a final order. ()

03. Presiding Officer. One (1) or more members of the agency board or commission, the agency head, or duly appointed hearing officer(s) who are authorized by statute or rule to preside at a contested case hearing. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. ()

04. Service or Serving. The agency’s or a party’s delivery or distribution of official documents in a legally sufficient manner in a contested case proceeding to the parties to that proceeding and, if applicable, to any other persons required by statute, rule, order, or notice to receive official documents. ()

003. ABBREVIATIONS (RULE 3).

These rules use the following abbreviations: ()

01. ADA. ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq. ()

02. ADR. ADR means alternative dispute resolution, which includes, but is not limited to, mediation, arbitration, negotiation, conciliation, collaboration, mini-trial, and peacemaking. ()

03. APA. APA means the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code. ()

04. IRAP. IRAP means these rules, the Idaho Rules of Administrative Procedure. ()

004. LIBERAL CONSTRUCTION (RULE 4).

The rules in this chapter will be liberally construed to secure the just, speedy, and inexpensive determination of

contested cases proceedings. ()

005. COMMUNICATIONS WITH AGENCY (RULE 5).

All communications that are intended to be part of an official record for a decision in a contested case must be filed with the presiding officer. Unless otherwise provided by statute, rule, order, or notice, documents are considered filed when received by the presiding officer, not when mailed or otherwise transmitted. ()

006. IDENTIFICATION OF COMMUNICATIONS (RULE 6).

Communications regarding a given proceeding should refer to that proceeding's case caption and case number. ()

007. COMPUTATION OF TIME (RULE 7).

In computing any period of time set by these rules, the day of the event from which the period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday. ()

008. FEES AND REMITTANCES (RULE 8).

Fees and remittances to the agency, including cost awards, shall be paid in the manner directed by the agency. ()

009. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT REQUIREMENTS (RULE 9).

All conferences and hearings must be held by means or in facilities meeting the accessibility requirements of the ADA, and any notice of conference or hearing must inform the parties that the conference or hearing will be conducted in compliance with the accessibility requirements of the ADA. Any notice of conference or hearing must inform the parties and other persons notified that if they require accessibility accommodation pursuant to the ADA, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the conference or hearing that the request must be made. ()

010. PRACTICE NOT COVERED BY STATUTE OR RULES (RULE 10).

In cases where no provision is made by statute or by these rules, proceedings in contested cases to which these rules apply shall be in accordance with the practice usually followed in such or similar contested cases, or as may be prescribed by the hearing officer or stipulated to by the parties. ()

011. – 099. (RESERVED)

**SUBCHAPTER B – PROSECUTIONS AND INFORMAL RESOLUTIONS (RULES 100-199)
Rules 100 Through 149 – Agency As Prosecutor And Advisor**

100. CONTRAST BETWEEN AGENCY'S PROSECUTORIAL/INVESTIGATIVE AND ADJUDICATORY FUNCTIONS (RULE 100).

When statute assigns to an agency both (1) the authority to initiate petitions or to investigate petitions made by the public, and (2) the authority to decide the merits of petitions, the agency is required to perform both of those functions and shall follow the following procedures within Rules 100 through 103 applicable to the agency head, agency attorneys, agency staff, and hearing officers in processing these petitions or responding to citizen inquiries. As used within Rules 100 through 103, the term "agency head" shall include any person designated by the agency head to exercise, in whole or in part, the ultimate legal authority vested in the agency. ()

01. Prosecutorial/Investigative Function. The prosecutorial/investigative function can be performed exclusively by agency attorneys and agency staff. When required or allowed by statute, the agency head may participate in or supervise investigations preceding the issuance of a petition and may supervise the agency attorneys and agency staff conducting the prosecution of the petition issued by the agency head, but the agency head shall not participate in the prosecution of a formal contested case hearing for a petition issued by the agency unless the agency head does not participate in the adjudicatory function. ()

02. Adjudicatory Function. The adjudicatory function is performed by the agency head and/or a hearing officer. The adjudicatory function includes: deciding whether to issue a petition upon the basis of allegations

before the agency when the decision to issue the petition is made by an agency head acting in an adjudicatory capacity, i.e., when presented by agency staff in a formal setting with the question whether a petition shall be issued; deciding whether to accept a consent order or other settlement after a petition is issued when the decision to accept a consent order or other settlement is made by an agency head acting in an adjudicatory capacity; and deciding the merits of a petition following presentation of evidence in formal contested case proceedings. ()

101. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR AGENCY ISSUANCE OF A PETITION (RULE 101).

01. Response to Public Inquiry. When the public contacts an agency head, an agency attorney, or agency staff to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, the agency head may: explain the agency’s procedures; explain the agency’s jurisdiction or authority (including the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a petition before the agency. Additionally, response can be provided by specific agency roles as follows: ()

a. The Agency Head. When the agency head issues petitions, the agency head may also discuss whether given allegations would, in the agency head’s opinion, warrant the issuance of a petition or warrant direction to staff to pursue further investigation. No statement of the agency head in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. ()

b. The Agency Attorney. An agency attorney assigned to a prosecutorial/investigative role may also discuss whether given allegations would, in the attorney’s opinion, warrant the issuance of a petition or warrant direction to staff to pursue further investigation. The agency is not bound by the attorney’s advice or recommendations, and the attorney should notify the public that the agency is not obligated to follow the attorney’s advice or recommendations. ()

02. The Agency Staff. Agency staff may also express an opinion whether given allegations would, in the agency staff’s opinion, warrant the issuance of a petition or warrant agency staff’s further investigation. The agency is not bound by the agency staff’s advice or recommendations, and the agency staff should notify the public that the agency is not obligated to follow the agency staff’s advice or recommendations. ()

03. Presiding Officers. When the public contacts a presiding officer to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, the presiding officer should not discuss the matter, but should refer the member of the public to other agency personnel. ()

04. Office of Administrative Hearings. When the public contacts the Office of Administrative Hearings to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, Office of Administrative Hearings staff should not discuss the matter, but should refer the member of the public to other agency personnel. ()

102. AGENCY PROCEDURES AFTER ISSUANCE OF A PETITION (RULE 102).

01. The Agency Head. ()

a. Prohibited Contacts--Allowable Managerial Reporting. Once a petition has issued, the agency head shall not discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or an assigned hearing officer, unless authorized or required by statute. The agency head may request periodic progress reporting on staff preparation from an executive director or other staff member in charge. As required to perform statutory supervisory duties, the agency head may also approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the prosecution, and otherwise discharge the agency head’s statutory management and supervisory duties. ()

b. Allowed Contacts. The agency head may discuss the substance of the petition with agency attorneys and agency staff who are not involved in the prosecution or investigation of the petition. When one or more members of the agency head sits as a presiding officer to hear the contested case, any other member of the agency

head not participating in the prosecution and not supervising prosecutorial/investigative personnel may discuss the substance of the petition with that presiding officer. ()

02. The Agency Attorney. ()

a. Prosecutorial/Investigative Attorneys. Except as to allowed contacts with the agency head, no agency attorney involved in the investigation or prosecution of a petition shall discuss the substance of the petition ex parte with the agency head, the hearing officer assigned to hear the petition, or with any agency attorney assigned to advise or assist the agency head acting as a presiding officer assigned to hear the petition. ()

b. Advisory Attorneys. Except as to allowed contacts with the agency head, no agency attorney assigned to advise or assist the agency head shall discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or an assigned hearing officer. An agency attorney assigned to advise or assist the agency head acting as a presiding officer may discuss the substance of the petition with that agency head. ()

03. The Agency Staff. ()

a. Prosecutorial/Investigative Staff. Except as to allowed contacts with the agency head, no member of the agency staff involved in the investigation or prosecution of the petition shall discuss the substance of the petition ex parte with the agency head, any agency attorney assigned to advise or assist the agency head acting as a presiding officer assigned to hear the petition, or an assigned hearing officer. ()

b. Advisory Staff. Except as to allowed contacts with the agency head, no agency staff assigned to advise or assist the agency head shall discuss the substance of the petition ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the petition. Agency staff assigned to advise or assist an agency head acting as a presiding officer may discuss the substance of the petition with the agency head. ()

04. Presiding Officers. ()

a. Agency Heads. Agency heads acting as a presiding officer may discuss the substance of a petition with attorneys of the agency assigned to advise or assist the agency head acting as a presiding officer. ()

b. Assigned Presiding Officers. Except as to allowed contacts with the agency head, no assigned presiding officer shall discuss the substance of a petition ex parte with an agency head, any representative of any party, or with agency attorneys or agency staff involved in the prosecution or investigation of a petition. ()

c. Communications With Other Hearing Officers. Any presiding officer may discuss the substance of a petition with any other hearing officer not assigned to the matter, including hearing officers within the Office of Administrative Hearings, provided that: ()

i. The presiding officer and the other hearing officer make reasonable efforts to avoid discussing factual information that is not a part of the record; and ()

ii. The presiding officer does not abrogate their responsibility to personally decide the matter. ()

d. Procedural matters. Presiding officers may also discuss, with any other hearing officer not assigned to the matter, including hearing officers within the Office of Administrative Hearings, any procedural matter related to a proceeding, including interpretation and application of the APA and/or the IRAP. ()

103. ASSISTANCE WITH AGENCY HEAD'S CONSIDERATION OF RECOMMENDED OR PRELIMINARY ORDER (RULE 103).

01. The Agency Head. In considering a presiding officer's recommended or preliminary order, the agency head issuing a final order may consult with an agency attorney assigned to advise or assist the agency head and with agency staff who did not participate in the investigation or prosecution of the petition. The agency head shall

not discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or the presiding officer. ()

02. The Agency Attorney. ()

a. Prosecutorial/Investigative Attorneys. No agency attorney involved in the investigation or prosecution of a petition shall consult with the agency head issuing a final order considering a presiding officer's recommended or preliminary order. An agency attorney who was involved in the investigation or prosecution of the petition may attend public meetings of the agency head that consider petitions and may respond to questions from the agency head, so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the agency's prosecutorial/investigative attorneys. ()

b. Advisory Attorneys. An agency attorney assigned to advise or assist the agency head in consideration of the petition may consult with the agency head in preparation for or while the agency head is considering a presiding officer's recommended or preliminary order. ()

03. The Agency Staff. ()

a. Prosecutorial/Investigative Staff. No member of the agency staff involved in the investigation or prosecution of the petition shall consult with the agency head in their consideration of a presiding officer's recommended order or preliminary order. ()

b. Advisory Staff. Any member of the agency staff assigned to advise or assist the agency head may consult with the agency head in its consideration of a presiding officer's recommended order or preliminary order at the agency head's direction. ()

c. Presiding Officers. No presiding officer shall consult with any person regarding the agency head's consideration of the presiding officer's recommended or preliminary order. ()

104 – 149. (RESERVED)

Rules 150 through 199 – Informal Dispositions

150. INFORMAL DISPOSITIONS, GENERALLY (RULE 150).

Informal dispositions may be conducted in writing, by telephone or video, or in person, and may include individual contacts by or with the agency staff asking for information, advice, or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. At any time following the presentation of an informal disposition to the presiding officer, the presiding officer may, including at the time of hearing, request additional information needed by the presiding officer to determine whether to render a decision in the contested case proceeding. ()

151. ALTERNATIVE DISPUTE RESOLUTION OF CONTESTED CASES (RULE 151).

If informal disposition cannot be reached by the parties, the use of ADR at any time before or after a contested case has been initiated is encouraged. A presiding officer may inquire as to the status of ADR or otherwise encourage parties to undertake ADR, but a presiding officer may not order parties to undertake ADR without the agreement of all parties. No party may be penalized or sanctioned for failing or refusing to participate in ADR, except where a party refuses or fails to participate in mandatory or binding ADR that the parties have voluntarily agreed to. ()

152. NEUTRALS (RULE 152).

When ADR is used for all or a portion of a contested case, or prior to the initiation of a contested case, an agency may provide a neutral, at the agency's cost, to assist the parties in resolving their disputed issues. The neutral may be any individual agreed upon by the parties, but must be someone with no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. If the parties are unable to agree upon, or identify, a neutral to provide ADR services, the agency shall make a request to the Office of Administrative Hearings for the selection and provision of a neutral by the Chief Administrative Hearing Officer. ()

153. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 153).

Negotiations regarding a potential consent order or other settlement made prior to or during a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made, and all other aspects of negotiation (except agreements reached) in any such negotiations are not part of the record.

()

154. PROCEDURE FOR NOTICE OF INFORMAL DISPOSITION OCCURRING PRIOR TO A CONTESTED CASE PROCEEDING (RULE 154).

The terms of any informal disposition, including, but not limited to, any stipulation regarding agreement as to facts, evidence, or issues in a contested case, which are reached prior to the initiation of a contested case proceeding shall be disclosed by the parties in full to the presiding officer no later than the initial scheduling conference, unless otherwise directed by the presiding officer.

()

155. STIPULATIONS REGARDING FACTS (RULE 155).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The presiding officer is not bound to adopt a stipulation of the parties, but may do so. If adopted, the presiding officer may regard a stipulation as evidence, or may require additional proof by evidence of the facts stipulated. If the presiding officer rejects a stipulation, they will do so before issuing their order, and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation.

()

156. CONSENT ORDERS AND OTHER SETTLEMENTS (RULE 156).

This rule sets forth procedures to be followed when a consent order or other settlement is negotiated before or after the initiation of a contested case proceeding.

()

01. Negotiations. Persons who participate in negotiations regarding a consent order or other settlement prior to the initiation of a contested case proceeding are not permitted to serve as a presiding officer in any subsequent contested case proceeding regarding the same matter. Once a contested case proceeding has been initiated, no presiding officer may thereafter participate in negotiations regarding a consent order or other settlement.

()

02. Presentation of Consent Order or Other Settlement to Agency Head. When the consent order provides, or the persons signing the consent order contemplate, that the consent order must be presented to the agency head for approval, the consent order may be presented to the agency head by representatives of any party, unless the agreement provides to the contrary. Any consent order presented to the agency head must be served on all parties and the presiding officer, if any. The agency head may accept or reject the consent order, indicate how the consent order must be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the consent order. When a consent order is rejected, no matter recited in the rejected consent order may be used as an admission against a party in any later proceeding before the agency, and any such matter must be proven by evidence independent of the consent order.

()

03. Consideration Of Consent Orders And Other Settlements By Presiding Officers. Consent orders and other settlements must be reviewed under this rule. When a consent order or other settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the agreement to consider the agreement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the agreement and whether acceptance of the agreement is consistent with the agency's charge under the law.

()

04. Suspension of Deadlines. Unless otherwise provided by law, the presiding officer may suspend all contested case deadlines, including the hearing date, during the consideration of a proposed consent order or other settlement.

()

157. INQUIRY ABOUT NEGOTIATIONS (RULE 157).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

158. BURDENS OF PROOF (RULE 158).

Proponents of a proposed consent order or other settlement agreement carry the burden of showing that the consent order or other settlement agreement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed consent order or other settlement agreement as a condition of accepting or rejecting the consent order or other settlement agreement. ()

159. CONSENT ORDERS AND SETTLEMENTS NOT BINDING (RULE 159).

The presiding officer is not bound by consent orders or other settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ()

160. NEGOTIATIONS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 160).

Negotiations regarding potential consent orders or other settlement agreements do not substitute for formal proceedings and do not exhaust administrative remedies, and any such negotiations are conducted without prejudice to the right of the parties to present the matter formally to the agency as a contested case. ()

161. – 199. (RESERVED)

SUBCHAPTER C – CONTESTED CASE PARTICIPANTS (RULES 200-299)
Rules 200 Through 224 – Parties

200. PARTIES TO CONTESTED CASES LISTED (RULE 200).

Unless otherwise labeled by statute or by agency practice, parties to contested cases before the agency are called petitioners, respondents, or intervenors. On reconsideration or appeal within the agency, parties are called by their original titles. ()

201. PETITIONERS (RULE 201).

Persons who seek to modify, amend, or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case, or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” ()

202. RESPONDENTS (RULE 202).

Persons against whom petitions or complaints are filed or about whom investigations are initiated are called “respondents.” ()

203. INTERVENORS (RULE 203).

Persons, other than petitioners and respondents, who are permitted to participate as parties are called “intervenors.” ()

204. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 204).

All parties, including agency staff, may appear at any hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments, including submitting any written filings which are required or which are requested by the presiding officer. ()

205. WITHDRAWAL AND SUBSTITUTION OF PARTIES (RULE 205).

Any party may withdraw from a proceeding upon notice to the presiding officer in writing or at hearing. Upon withdrawal of a party, the presiding officer shall determine if and how the contested case proceeding will continue. A presiding officer conducting the hearing may default the withdrawing party, may proceed with the hearing on the matter, or may take such other action consistent with law. A presiding officer may, upon motion, permit the substitution of a party as justice requires. ()

206. PERSONS NOT PARTIES – INTERESTED PERSONS (RULE 206).

Persons other than the persons named in Rules 200 through 203 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In proceedings in which persons other than a petitioner, respondent, or intervenor would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called “interested persons.” Interested persons may become intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. If not previously identified by the agency, the presiding officer may identify and serve potentially interested persons within their discretion or otherwise direct the agency to identify and serve such persons. ()

207. PERSONS NOT PARTIES – PUBLIC WITNESSES (RULE 207).

Persons not parties and not called by a party who may be permitted to testify at hearing are called “public witnesses.” Public witnesses do not have parties’ rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses’ written or oral statements and exhibits are subject to examination and objection by parties. Subject to a presiding officer’s determination of hearing procedure and admissibility of evidence, public witnesses have a right to offer evidence at hearing through written or oral statements and exhibits, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with these rules and any order of the presiding officer regarding the prehearing disclosure of expert testimony. ()

208. – 224. (RESERVED)

Rules 225 through 249 – Party Representatives

225. INITIAL PLEADING – LISTING OF, AND SERVICE UPON, REPRESENTATIVES (RULE 225).

The initial pleading of each party at the formal stage of a contested case must name the party’s representative for service and state the representative’s e-mail and mailing address for purposes of receipt of all official documents. Unless authorized by order of the agency, no more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the first person signing the pleading will be considered the party’s representative. ()

226. TAKING OF APPEARANCES – PARTICIPATION BY AGENCY STAFF – USE OF AGENCY REPORT OR RECOMMENDATION (RULE 226).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff will be considered or used in reaching a decision, at the timely request of any party, the agency staff must appear at any hearing and be available for cross-examination and participate in the hearing in the same manner as a party. ()

227. REPRESENTATION OF PARTIES (RULE 227).

Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Persons appearing in contested case proceedings in a representative capacity must conform to the standards of professional conduct required of attorneys before the courts of Idaho. If any representative fails to conform to these standards, the presiding officer may exclude the person from the proceeding. ()

228. ATTORNEY REPRESENTATIVES (RULE 228).

Attorneys representing a party in a contested case proceeding must have an active license to practice law in the state of Idaho. Attorneys not licensed in Idaho but who are licensed in one or more other states may request admission to the proceeding on a pro hac vice status by the presiding officer consistent with Idaho State Bar Commission Rule 227(i) “Agency Admission.” ()

229. SUBSTITUTION OF REPRESENTATIVE (RULE 229).

A party’s representative may be changed and a new representative may be substituted by notice to the presiding officer and to all other parties, which substitution will be liberally allowed so long as the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at the time of hearing solely in the presiding officer’s discretion. ()

230. WITHDRAWAL OF REPRESENTATIVE (RULE 230).

Persons representing a party who wish to withdraw their representation must immediately file in writing a notice of withdrawal of representation to the presiding officer and serve that notice on the party represented and all other parties. If a party's representative withdraws, the presiding officer may reset deadlines and/or the hearing as long as the proceedings are not unreasonably delayed. ()

231. CONDUCT REQUIRED – SANCTIONS FOR MISCONDUCT (RULE 231).

Parties and their representatives are expected to conduct themselves in a civil and nondisruptive manner during contested case proceedings. Persons appearing in contested case proceedings in a representative capacity are further expected to conform to the standards of civility in professional conduct expected of attorneys before the courts of Idaho. The presiding officer may, in their discretion, reprimand or exclude from any hearing any person who disrupts the hearing or engages in improper conduct. For disruptive or improper conduct made in the course of a contested case proceeding outside of hearings, the presiding officer may take any action not inconsistent with these rules, the APA, and any other applicable statute or rule to maintain order during the course of a contested case proceeding and to ensure an expeditious, fair, and impartial proceeding. ()

232. – 249. (RESERVED)

Rules 250 through 299 – Hearing Officers and Presiding Officers

250. APPOINTMENT OF HEARING OFFICERS (RULE 250).

A hearing officer is a presiding officer, other than the agency head, in a contested case proceeding. Subject to governing statutes and rules, a hearing officer may be appointed by an agency head. ()

01. Office of Administrative Hearings. Where required by statute or rule, or where an agency head otherwise requests a hearing officer as permitted by statute or rule, an agency head will refer a hearing officer appointment to the Office of Administrative Hearings. Upon receipt and acceptance of the referral, the Chief Administrative Hearing Officer or their designee shall appoint a hearing officer of their own selection by issuing a Notice of Appointment to all parties to the contested case proceeding. ()

02. Other Hearing Officers. Hearing officers not appointed through the Office of Administrative Hearings may be employees of the agency or independent contractors, and may (but need not) be attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. ()

251. DISQUALIFICATION (RULE 251).

01. Petitions – Determination. Upon any petition to disqualify a presiding officer, the presiding officer may request additional briefing or argument from any party to the contested case proceeding, or may otherwise immediately rule upon the petition on its face without additional briefing or argument. ()

02. Voluntary Disqualification. A presiding officer in a contested case may make a voluntary disqualification without stating any reason therefor. ()

252. SCOPE OF AUTHORITY OF PRESIDING OFFICERS (RULE 252).

01. Standard Scope of Authority. Unless otherwise limited by statute, rule, or in the appointment by the agency, presiding officers have the following standard scope of authority: ()

a. Authority to schedule cases assigned to the presiding officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; ()

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ()

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and ()

d. Authority to issue a written decision of the presiding officer, including a narrative of the proceedings before the presiding officer and findings of fact, conclusions of law, and recommended or preliminary orders by the presiding officer. ()

02. Change in Scope of Authority. Except as prohibited by statute or rule, at any time prior to hearing, a presiding officer's scope of authority in a proceeding may be increased or limited by written directive of the agency head. Such change in the scope of authority shall be made on the agency head's initiative alone, and no motion to the presiding officer requesting a change in the scope of their authority will be permitted. ()

253. CHALLENGES TO STATUTES (RULE 253).
A presiding officer in a contested case has no authority to declare a statute unconstitutional. ()

254. CHALLENGES TO RULES (RULE 254).
An agency head, acting either as a presiding officer or in issuing a final order, may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. A presiding officer, other than an agency head, does not have the authority to consider and decide such issues except upon express written grant of authority by the agency head. ()

255. EX PARTE COMMUNICATIONS (RULE 255).

01. Substantive Communications. When a presiding officer receives or participates in an ex parte communication regarding any substantive issue from a party or party representative during a contested case, the presiding officer shall place a copy of the communication, or a detailed summary thereof, in the file for the case. Additionally, the copy or summary of the communication shall also be distributed to all parties of record. Upon request of any party or upon the presiding officer's own motion, the presiding officer shall permit either a hearing or written response by any party not involved in the communication, to allow those parties an opportunity to participate in the communication. Substantive communications are part of the agency record. ()

02. Procedural Communications. The presiding officer may communicate ex parte, orally or in writing, with a party concerning procedural matters (e.g., scheduling). When reasonably feasible, a written confirmation of such communication should be sent to all parties to the proceeding, with a copy placed in the file of the case. Procedural communications are not part of the agency record, except as ordered by the presiding officer in their discretion, either on their own motion or a motion by any party. ()

03. Communications With The General Public. Ex parte communications from members of the general public who are neither parties, interested persons, nor witnesses are not required to be reported by this rule. However, any communications with such persons shall be disclosed to all parties to the proceeding, in writing with a copy to the file, in the event that those persons become parties, interested persons, or witnesses to the proceeding. Hearing or written response shall be permitted in the same manner as with any other substantive ex parte communication. ()

256. – 299. (RESERVED)

SUBCHAPTER D – PLEADINGS AND MOTIONS (RULES 300-399)
Rules 300 Through 324 – Pleadings

300. PLEADINGS – NAMING (RULE 300).
Except as otherwise named by statute, rule, or established agency practice, pleadings initiating contested cases may be called "petitions," "applications," "protests," or "complaints," and responding pleadings may be called "answers." Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party may adopt or join any other party's pleading. ()

301. PLEADINGS – CONSTRUCTION (RULE 301).
Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. An exhibit to a pleading is a part of the pleading for all purposes. ()

302. PLEADINGS – FORM AND CONTENTS (RULE 302).

01. Form. All pleadings, except those filed on agency forms, submitted by a party and intended to be part of an agency record must be in writing and be submitted as follows unless otherwise directed by the agency or presiding officer: ()

a. Caption. Pleadings must include the case caption, case number, and title of the document. Documents complying with this rule will be in the following form:

Name of Party/Representative
Mailing Address of Party/Representative
Street Address of Party/Representative (if different)
Telephone Number of Representative
E-mail Address of Representative
Attorney/Representative for [Name of Party] (if needed)

_____ BEFORE THE [NAME OF AGENCY]

[Title of Proceeding] _____ CASE NO. [Case number assigned by agency]

_____ [TITLE OF DOCUMENT]

()

b. Party Information. Pleadings must include, in the upper left corner of the first page, the name, mailing and street address, telephone number, and e-mail address of the person filing the document: ()

c. Formatting. Text should be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins should be at least one inch on all four sides. ()

d. Electronic filings. Pleadings filed electronically should be in a commonly-used format, such as in.PDF or.DOCX. ()

e. Paper filings. Pleadings filed in paper form should be on 8 1/2 by 11-inch paper, single-sided and numbered. ()

02. Content. Pleadings should: ()

a. Identify the party making the pleading, and the party to whom the pleading is directed; ()

b. Fully state all facts, contentions, claims, and defenses in numbered paragraphs, each limited to a single set of circumstances, where practicable; ()

c. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based; ()

d. State the right, license, award, or authority sought, contested, or at issue; and ()

e. The relief sought, if any. ()

303. ANSWERS – SPECIFIC REQUIREMENTS (RULE 303).

01. Time for filing. An answer to a pleading initiating a contested case must be filed and served on all parties of record within twenty-one (21) days after service of the pleading, unless a different deadline is provided by order or notice. ()

02. Content. An answer must admit or deny each material allegation of the pleading initiating the

contested case. Any material allegation not specifically admitted shall be considered denied. Matters alleged by cross-petition, cross-complaint, or affirmative defense must be separately stated and numbered. ()

03. Motions in Lieu of Answer. A motion filed in lieu of an answer in response to a pleading initiating a contested case, such as a motion to dismiss, strike, or for clarification, must be made within the time to answer. Any such motion suspends the party’s obligation to file an answer until such time as the presiding officer directs that an answer be filed. ()

04. Failure to File an Answer or Motion. If a party fails to file an answer or a motion under this rule in response to a pleading, the presiding officer may issue a notice of default against the respondent pursuant to these rules. ()

05. Motions Directed to the Answer. A motion directed to an answer must be filed within fourteen (14) days after service of the answer. ()

304. DEFECTIVE, INSUFFICIENT, OR LATE PLEADINGS (RULE 304). Defective, insufficient, or late pleadings may be returned, dismissed, or rejected. ()

305. AMENDMENTS TO PLEADINGS (RULE 305). The presiding officer may allow any pleading to be amended or corrected, the allowance for which will be liberally granted. ()

306. – 324. (RESERVED)

Rules 325 through 349 – Motions

325. MOTIONS — DEFINED — FORM AND CONTENTS — TIME FOR FILING (RULE 325).

01. Motions Defined. All other requests for the presiding officer to take any other action in a contested case are called “motions.” ()

02. Form and Contents. Motions should: ()

a. Be in writing, and comply with the same form requirements as pleadings; ()

b. Not exceed twenty-five (25) pages for dispositive motions, or ten (10) pages for any other motion, except as authorized by the presiding officer; ()

c. Fully state the facts upon which they are based; ()

d. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and ()

e. Include any affidavits, declarations, exhibits, and attachments intended to support the motion, which do not count towards any page limitation, except as otherwise directed by the presiding officer; and ()

f. State the relief sought. ()

03. Oral Argument. If the moving party desires oral argument on the motion, it must state so in the motion, including whether it is requested to be in-person or by remote means. All motions seeking dispositive relief shall be set for oral argument; all other motions may be decided on briefing without further oral argument, in the presiding officer’s discretion. ()

04. Time for Filing. Except as otherwise directed by statute, rule, or order of the presiding officer, motions may be filed at any time during a contested case proceeding. ()

05. Oppositions to Motions. An opposition to a motion may be filed by any party in the proceedings

using the same form and content requirements as the motion being opposed. Unless otherwise directed by the presiding officer, any opposition to a motion must be filed within fourteen (14) days after service of the motion. Reply briefs and further briefing on the motion shall be permitted only upon request of the presiding officer. ()

06. Determination of Motions. ()

a. Dispositive Motions. Any ruling on a dispositive motion shall be in writing. The presiding officer may suspend all deadlines, including the evidentiary hearing date, during the consideration of a dispositive motion. ()

b. Other Motions. Except as otherwise directed by statute, rule, or these rules, a ruling on any other motion may be presented orally by the presiding officer. The presiding officer may direct any party to submit a proposed order regarding an oral ruling. ()

326. SPECIAL MOTIONS (RULE 326).

01. Interlocutory Motions for Reconsideration. Motions for reconsideration are permitted for any interlocutory order issued by a presiding officer, but any such motion for reconsideration must be filed within fourteen (14) days of the issuance of the order for which reconsideration is sought. The presiding officer may, in their discretion, rule upon a motion for reconsideration with or without additional briefing, and with or without conference. ()

02. Motions for Permissive Appeal. Motions for permissive appeal are permitted for any interlocutory order issued by a presiding officer, subject to the deadlines and procedure set forth in Idaho Appellate Rule 12, "Appeal By Permission." ()

327. – 349. (RESERVED)

Rules 350 through 374 – Filing and Service of Pleadings and Motions

350. FILING –NUMBER OF COPIES – ELECTRONIC SUBMISSION – FACSIMILE MACHINE PROHIBITED (RULE 350).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the presiding officer and any other person designated by the agency to receive filings in the case. If authorized by the presiding officer or the agency, e-mail or other electronic submission of documents will satisfy this requirement. No party shall be required to file, submit, or receive any documents via facsimile machine. ()

351. SERVICE BY PARTIES (RULE 351).

All documents submitted by a party and intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing with the presiding officer and any other person designated by the agency to receive filings in the case. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. The presiding officer may also direct the means of service the parties are to use during a contested case proceeding. ()

352. SERVICE BY AGENCY OR PRESIDING OFFICER (RULE 352).

01. Service by the Agency. Unless otherwise required by statute or rule, the officer designated by the agency to serve notices, summonses, complaints, or orders issued by the agency, that initiate or conclude a contested case proceeding, may serve these documents by regular mail, or by certified mail with return receipt requested, to a party's last known mailing address, or by personal service. ()

02. Service by a Presiding Officer. Unless otherwise required by statute or rule, if a party has appeared in a contested case, the presiding officer, in their discretion, may determine the governing means of service during the contested case proceeding. Service may be effectuated by personal service, regular mail, certified mail with return receipt requested, or e-mail. Where a party has appeared by e-mail, service by e-mail shall be the preferred means of service. When an item to be served is too large for e-mail, service may be made by other means.

with e-mail notice to the party as to how the item is being served. ()

03. Proof of Service. Every notice and order that the agency or presiding officer serves in a contested case must be accompanied by proof of service stating the service date, each party or other person who was served, and the method of service. The agency or presiding officer may use a proof of service similar to those used by parties. ()

353. WHEN SERVICE COMPLETE (RULE 353).
Unless otherwise provided by statute, rule, order, or notice, service is complete when a copy is deposited in the United States mail, Statehouse mail, or with a third-party commercial overnight service; when personal service is made; or when there is an electronic verification that an e-mail has been sent. ()

354. PROOF OF SERVICE (RULE 354).
Every document that a party or interested person files and intends to be part of the agency record must be accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have on
this _____ day of _____,
served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names and addresses)).
(by e-mail to: (list names and e-mail addresses))
(Signature) ()

355. – 399. (RESERVED)

SUBCHAPTER E – PREHEARING MATTERS (RULES 400-499)
Rules 400 Through 424 – Prehearing Conferences

400. PURPOSES OF THE SCHEDULING CONFERENCE (RULE 400).
The presiding officer may, by order or notice issued to all parties and to all interested persons, convene a scheduling conference in a contested case for the purposes of: identifying or simplifying the issues; identifying stipulations of fact or evidence to avoid unnecessary discovery; scheduling discovery when discovery is authorized before the agency, as well as identifying the allowed types of discovery and limitations thereon; arranging for the exchange of proposed exhibits and witness lists; discussing the potential for, or status of, ADR; scheduling of the prehearing conference, evidentiary hearing, and other hearings; establishing anticipated procedures at the evidentiary hearing and other hearings; determining the format and/or location of the evidentiary hearing; determining any transcription or additional recording request by any party; identifying facts and materials for which official notice may be had; resolving any accommodation requests, including, but not limited to, ADA or interpreter requests; and addressing other matters that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

401. NOTICE OF SCHEDULING CONFERENCE (RULE 401).
Except where differently required by statute or rule, notice of the place, date, and hour of a scheduling conference should be served within seven (7) days of appointment of the presiding officer, and the scheduling conference should, when feasible, be held within fourteen (14) days of appointment of the presiding officer. The place, date, or hour of a scheduling conference may also be set or reset by agreement of the parties, subject to approval by the presiding officer, or by the presiding officer on their own initiative, if the presiding officer finds it necessary and appropriate. ()

402. PURPOSES OF THE PREHEARING CONFERENCE (RULE 402).
Except where otherwise required by statute or rule, or where the presiding officer determines a prehearing conference is not necessary based upon the needs of the case, the presiding officer should convene a prehearing conference in a contested case no less than seven (7) days prior to the evidentiary hearing, except where the presiding officer determines that the needs of the case require otherwise. The purposes of the prehearing conference shall include: identifying or simplifying the issues; identifying stipulations of fact or evidence to avoid unnecessary proof; disposition of pending motions; confirming compliance with all prehearing deadlines; discussing the potential for, or status of, ADR; avoidance of unnecessary proof and of cumulative evidence; establishing procedures at the

evidentiary hearing and other hearings; addressing proposed stipulations between the parties regarding any facts or evidence; and addressing other matters that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

403. ORDERS RESULTING FROM CONFERENCES (RULE 403).

The presiding officer should issue a written order based upon the results of, agreements reached at, and rulings made at any scheduling or prehearing conference. Orders issued regarding the results of conferences will control the course of subsequent proceedings, unless modified by the presiding officer for good cause. Any such order issued shall be served upon all parties and to all interested persons to the proceeding. ()

404. OTHER STATUS CONFERENCES BEFORE THE EVIDENTIARY HEARING (RULE 404).

Upon approved request by any party to the presiding officer or on the presiding officer's own initiative, a status conference may be set at any time prior to the evidentiary hearing to address any matter that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

405. RECORD OF CONFERENCES (RULE 405).

Prehearing conferences must be held formally before the presiding officer. All other conferences may be held formally (on the record) or informally (off the record) before the presiding officer. Agreements by the parties may be put on the record during formal conferences, or may be reduced to writing and filed after the conference. The results of any informal conference, or any agreements reached therein, must be later put on the record, either verbally in subsequent conference or filed in writing, to be considered part of the agency record. ()

406. – 424. (RESERVED)

Rules 425 through 449 – Defaults

425. DEFAULT (RULE 425).

A presiding officer may enter a default order against any party pursuant to the provisions of Section 67-5242, Idaho Code. ()

01. Procedure if No Petition to Vacate is Filed. If no timely petition to vacate is filed by the party subject to a proposed default order, the presiding officer should issue or vacate the default no later than three (3) days after the expiration of the time within which the party could have filed the petition, or otherwise as promptly as possible, except where a shorter period is directed by law. ()

02. Procedure Upon Filing of a Petition to Vacate. Upon the timely filing of a petition to vacate by a party subject to a proposed default order, the presiding officer may request additional briefing from the parties, and may also set a conference for argument regarding the proposed default order. Whether additional briefing and/or argument is accepted, the presiding officer should issue or vacate the default no later than fourteen (14) days after the petition to vacate is filed, except where a shorter period is directed by law. ()

03. Procedure After Default. Upon the issuance of a default order, the presiding officer shall set a conference with the non-defaulting party to determine which remaining proceedings, if any, are still needed to complete the adjudication. Such conference should be held as soon as practicable after the issuance of the default order. ()

04. Notices to Defaulting Party. While the defaulting party shall not participate in any remaining proceedings, the presiding officer shall direct that all subsequent filings, including all orders issued in the contested case proceeding, continue to be served on the defaulting party by the most appropriate means, as determined by the presiding officer. ()

426. CONTINUANCE IN LIEU OF DEFAULT (RULE 426).

A presiding officer may, in the interest of due process and on their own motion, decline to issue a notice of a proposed default order, and instead make a reasonable continuance of the proceedings. If the same party subsequently fails to attend any stage of the continued proceedings, a notice of a proposed default order must be issued. ()

427. – 449. (RESERVED)

Rules 450 through 474 – Discovery

450. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 450).

01. Discovery, Generally. Parties are encouraged to informally exchange information and documentation which will aid in the just, speedy, and inexpensive disposition of the proceeding. Except where prohibited by statute or rule, discovery may be conducted as agreed between the parties or where ordered by the presiding officer on their own initiative. The presiding officer may, in their discretion, limit any discovery on the grounds that it:

- a.** Does not appear relevant;
- b.** Appears unduly repetitious;
- c.** Violates any constitutional, statutory, or regulatory provisions;
- d.** Violates any privilege provided by statute or recognized by the courts of Idaho;
- e.** Appears to be made in bad faith;
- f.** Is not proportional to the needs of the proceeding; and/or
- g.** Otherwise exceeds the permitted scope of discovery as defined in these rules.

02. Kinds and Scope - Rules of Civil Procedure. Unless otherwise provided by statute, rule, order, or notice, when discovery is authorized before the agency, the kinds and scope of discovery is governed by the Idaho Rules of Civil Procedure, subject to any limitations established by the presiding officer.

451. WHEN DISCOVERY AUTHORIZATION NOT REQUIRED (RULE 451).

The agency or agency staff may conduct any inspection, examination, or investigation authorized by statute or rule at any time without making a discovery request or filing a motion to compel discovery. This rule recognizes, but does not enlarge or restrict, an agency’s statutory and/or regulatory right of inspection, examination (including mental or physical examination), or investigation which is independent of, and cumulative to, any right of discovery in contested case proceedings, and may be exercised by the agency whether or not a person is party to a contested case proceeding before the agency. Information obtained from any such statutory or regulatory inspection, examination, or investigation may be used in any contested case proceeding or for any other purpose, except as restricted by statute or rule. The presiding officer may, by order and upon request by the agency, authorize or compel any such inspection, examination, or investigation authorized by statute or rule.

452. RIGHTS TO DISCOVERY RECIPROCAL (RULE 452).

Where permitted, all parties to a proceeding have a right of discovery of all other parties to a proceeding, subject to any limitations set by the presiding officer.

453. SUBPOENAS (RULE 453).

The presiding officer may issue subpoenas, as authorized by statute or rule, upon a party’s motion or upon the presiding officer’s own initiative. A subpoena may command the person to whom it is directed to appear to give testimony at an evidentiary hearing, any other hearing, or a deposition at a specified time and place. A subpoena that commands a person to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at an evidentiary hearing, any other hearing, or a deposition, or may be issued separately. Any party, or person upon whom the subpoena has been served, may move to quash a subpoena prior to the deadline for compliance with the subpoena.

454. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 454).

Notices of deposition, cover letters stating that production requests, written interrogatories, or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for

admission have been served or are available for inspection, and objections to discovery must be filed and served in the same fashion as other pleadings and motions in the proceeding. ()

455. PREPARED TESTIMONY AND EXHIBITS (RULE 455).

Order, notice, or rule may require a party or parties to file before hearing, and to serve on all other parties, prepared expert testimony and exhibits to be presented at hearing. Assigned exhibit numbers should be used for all prepared testimony. ()

456. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 456).

The presiding officer may impose all sanctions recognized by statute or rule, including the rules of civil procedure, for failure to comply with an order compelling discovery or a duly-issued subpoena. ()

457. PROTECTIVE ORDERS (RULE 457).

The presiding officer may issue protective orders recognized by statute or rule, including the rules of civil procedure, limiting access to information and documents. ()

458. – 474. (RESERVED)

Rules 475 through 499 – Evidence

475. RULES OF EVIDENCE (RULE 475).

Evidence is admissible, and excludable, as provided in Section 67-5251, Idaho Code. The presiding officer may exclude inadmissible evidence with or without motion. Evidence should be taken by the presiding officer to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence, except as to rules governing evidentiary privileges, or where otherwise required by statute or rule. ()

476. EVALUATION OF EVIDENCE (RULE 476).

A presiding officer is entitled to weigh the quality of evidence presented, including the credibility of witnesses. While a presiding officer is not bound by the Idaho Rules of Evidence, except as provided in Rule 475, the presiding officer may assign less weight to evidence that would otherwise be inadmissible under the Idaho Rules of Evidence. ()

477. BURDEN OF PROOF (RULE 477).

Except as otherwise provided by statute, rule, regulation, or binding state or federal judicial decisional authority, the burden of proof is on the party requesting or challenging an agency action or order, or who is otherwise the proponent of an order or position. Absent an allegation of fraud, or a statute, rule, regulation, or binding state or federal judicial decisional authority requiring a higher standard, a preponderance of evidence standard applies. ()

478. HEARSAY (RULE 478).

The presiding officer may admit, weigh, and consider hearsay evidence. In evaluating hearsay, including hearsay which has been admitted without objection, the presiding officer should determine whether it is supported by circumstantial guarantees of trustworthiness, such as other corroborating evidence. A factual finding cannot be based solely on hearsay unless permitted by statute or where no objection has been made to the admission of the hearsay. ()

479. OFFICIAL NOTICE (RULE 479).

Official notice of facts may be taken as provided in Section 67-5251, Idaho Code. Any notice that official notice will be taken, or that official notice is requested, should be made in writing prior to any hearing in which the facts or material will be offered, and shall include either a copy of the facts or materials for which official notice may be taken, or citation to a readily-accessible source. If official notice of facts or materials is made at a hearing, for which official notice of such facts or materials had not been made prior to the hearing, the presiding officer may provide such recess or continuance sufficient to allow any party to contest and rebut the facts or material so noticed. ()

480. DEPOSITIONS AND PREPARED TESTIMONY (RULE 480).

Depositions and other prepared testimony, or parts thereof, may be offered into evidence and included in the record of hearing, with or without reading. Where only part of a deposition or prepared testimony is offered, a presiding officer may, upon motion or their own initiative, order that other parts of the deposition or prepared testimony be admitted.

()

481. OTHER WRITTEN EVIDENCE (RULE 481).

If a presiding officer determines that a part of the evidence in a contested case may be received in written form to expedite the case without substantially prejudicing the interests of any party, the presiding officer will allow any party to make objection thereto. ()

482. OBJECTIONS -- OFFERS OF PROOF (RULE 482).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or may receive the evidence subject to later ruling. For exhibits offered at hearing, the presiding officer should determine whether any party objects to the admission of the exhibit. Exhibits to which no objection is made are deemed admitted into evidence without the need for any additional action by the offering party. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken, but offers of proof regarding excluded evidence are permitted. ()

483. EXHIBITS (RULE 483).

Exhibit numbers may be assigned to the parties by the presiding officer before hearing. Except where permitted by the presiding officer to be presented in digital form, exhibits prepared for hearing should ordinarily be printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs, and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Neither motion pictures, slides, opaque projections, videotapes, audiotapes, nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without advance approval of the presiding officer. ()

484. POLYGRAPHS (RULE 484).

Except where required by statute or rule, results of polygraph examinations, and expert or lay opinion testimony based thereon, are not admissible unless all parties stipulate to admissibility. ()

485. EXPERTS (RULE 485).

A presiding officer may admit, weigh, and consider expert opinions, whether presented in writing or through testimony. Expert opinions are generally admissible if the proffering party demonstrates the relevancy of the expert opinions, as well as demonstrates the general reliability of the expert opinions, both as to methodology and qualifications of the expert. Expert testimony that is conclusory, offers legal opinions, or which is based solely upon hearsay, is inadmissible. Expert opinions may be offered in writing, and may be either set forth formally, as in an expert report, or informally, as in a letter, e-mail, records, or other similar writings. ()

486. INTERPRETERS (RULE 486).

01. Appointment. If an agency or presiding officer determines that an interpreter is needed for a hearing based upon a party's disability or lack of English language proficiency, the agency or presiding officer shall advise the party that he or she has a right to a qualified interpreter. If then requested, a qualified interpreter shall be appointed. A party needing interpretation may, alternatively, advise the agency or presiding officer that they will provide their own alternate qualified interpreter. ()

02. Oath. At the start of the hearing, the interpreter shall be sworn as follows: "Do you solemnly swear or affirm that you will interpret and/or translate accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law?" ()

03. Cost. The agency shall pay the cost of an interpreter needed for a hearing. Any alternate qualified interpreter used by the party needing interpretation shall be paid for solely by that party. ()

487. – 499. (RESERVED)

**SUBCHAPTER F – HEARINGS (RULES 500-599)
Rules 500 Through 599 – Hearings**

500. NOTICE OF HEARING (RULE 500).

If not previously set in an order following a scheduling or prehearing conference, notice of the time, place, and nature of the hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the presiding officer finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the name of the presiding officer who will hear the case, the name, address, and telephone number of the person to whom inquiries about scheduling or hearing facilities should be directed, and the names of persons with whom the pleadings or other documents in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has provided a statement of the legal authority under which the hearing is to be held and/or a short and plain statement of the matters asserted or the issues involved, the notice of hearing must do so. ()

501. HOW HEARINGS HELD (RULE 501).

Hearings may be held in person, by telephone, or by other remote technology, as agreed by the parties. If the parties are unable to agree how a hearing will be held, the presiding officer shall decide, based upon considerations of: locations of the parties; locations of any witnesses; agreements regarding the admission of prepared testimony or other evidence; complexity of the dispute; limitations in suitability of telephone or remote technology for one or more parties; and any other factor impacting the just, speedy, and inexpensive determination of the proceeding. However a hearing is held, all participants shall be afforded an opportunity to participate in the entire proceeding while it is taking place. ()

502. CONDUCT AT HEARINGS (RULE 502).

01. Nondisruptive Conduct. All persons attending a hearing must conduct themselves in a respectful and nondisruptive manner. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. ()

02. Abusive Or Improper Questioning Or Argument. A presiding officer may halt any questioning or argument they deem abusive or improper, with or without prior warning and with or without objection by a party. Continued abusive or improper questioning or argument thereafter by the same party may be deemed disruptive and subject to sanctions. ()

03. Audio-Visual Recordings. Except where otherwise not permitted by statute, rule, order, notice, or any other governing policy or procedure, audio-visual equipment, including cameras, microphones, and the like, may be operated in the hearing room by any attendee during the course of a hearing after permission is granted by the presiding officer and then only pursuant to any conditions the presiding officer may impose to avoid disruption of the hearing. At any time during the hearing, should disruption occur, the presiding officer may impose in their discretion any additional conditions upon the use of audio-visual equipment, including the revocation of permission for such use. ()

04. Sanctions for Disruptive Conduct. In the event of interference, disruption, or threat by any attendee to the hearing, the presiding officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include termination of the hearing or ordering the disruptive person to leave or be removed from the hearing. ()

503. CONFERENCE AT HEARING (RULE 503).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits, or prepared testimony, limitation of witnesses, order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ()

504. PRELIMINARY PROCEDURE AT HEARING (RULE 504).

Before taking evidence at a hearing, the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements to explain a party's presentation. ()

505. CONSOLIDATION OF PROCEEDINGS (RULE 505).

The agency or the presiding officer may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings, the presiding officer determines the order of the proceeding. ()

506. ORDER OF PROCEDURE (RULE 506).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ()

507. TESTIMONY UNDER OATH (RULE 507).

All testimony presented at hearing by any witness will be given under oath. Before testifying, each witness must swear or affirm that the testimony the witness will give before the presiding officer is the truth, the whole truth, and nothing but the truth. ()

508. PRESIDING OFFICER'S CALLING OR EXAMINING OF WITNESSES (RULE 508).

A presiding officer may call or examine a witness on their own or at a party's request. All parties are entitled to cross-examine the witness, and any party may make objections during the presiding officer's examination. ()

509. SEQUESTRATION OF WITNESSES (RULE 509).

On motion by a party, and upon showing of good cause, a presiding officer may order that any or all testifying witnesses be sequestered during a hearing. However, a named party and/or their designated representative, even if designated as a witness, shall not be sequestered. ()

510. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 510).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ()

511. CONTINUANCE OF HEARING (RULE 511).

The presiding officer may continue a hearing to a later date, either upon motion or on their own initiative. ()

512. RULINGS AT HEARINGS (RULE 512).

The presiding officer rules on motions and objections presented at hearing. Rulings by the presiding officer may be made verbally on the record, or addressed by written order after hearing. ()

513. ORAL ARGUMENT (RULE 513).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ()

514. BRIEFS – PROPOSED ORDERS – POSITION STATEMENTS (RULE 514).

In any contested case, the presiding officer may request, and any party or interested person may ask to submit, any briefs, proposed orders, or position statements regarding any issue in the proceeding. ()

515. – 599. (RESERVED)

**SUBCHAPTER G – POSTHEARING MATTERS (RULES 600-699)
Rules 600 Through 624 – Record For Decisions**

600. AGENCY RECORD (RULE 600).

01. Requirement. The agency shall maintain an official record of each contested case as provided for in Section 67-5249, Idaho Code. ()

02. Presiding Officers. Presiding officers shall provide the agency with the presiding officer's copy of the agency record within a reasonable time after the expiration of the time for any motion for reconsideration of a recommended or preliminary order, or at such other time as the agency may request. If the presiding officer is one assigned by the Office of Administrative Hearings, the Office of Administrative Hearings shall provide such copy of

the agency record to the agency. ()

601. RECORDING OR REPORTING OF HEARINGS (RULE 601).

01. In-Person and Telephonic Hearings. All in-person and telephonic hearings shall be recorded at the agency's expense, either by audiotape, digital audio, and/or court reporter, as selected by the presiding officer. Any party requesting a video recording of an in-person or telephonic hearing may do so at their own expense, subject to the presiding officer's determination that the recording does not cause distraction or disruption, which determination may be made at any time before or during the hearing. ()

02. Remote Video Hearings. All remote video hearings shall be recorded at the agency's expense, by digital audio, digital video, and/or court reporter, as selected by the presiding officer. ()

03. Transcripts. Any party may request an official transcript of any recording of any hearing at their own expense. However, if a party uses an official transcript for any purpose in the contested case proceeding, the full official transcript must be provided to all parties and the presiding officer. If a party is required to provide a copy of an official transcript to all parties and the presiding officer, the presiding officer may, in their discretion, direct all other parties to contribute to the expense of the official transcript. ()

04. Presiding Officers. In preparing any order, a presiding officer may rely upon any unofficial transcript of a hearing, including, but not limited to, any transcript automatically generated by computer software. If the presiding officer determines that an unofficial transcript of a hearing is incomplete or insufficient, or otherwise determines that an official transcript is required for any other reason, the presiding officer may direct the creation of an official transcript at the agency's expense. If the agency is not a party to the proceeding, the presiding officer may direct the creation of an official transcript at the parties' shared expense. ()

602. – 624. (RESERVED)

Rules 625 through 649 – Orders

625. RECOMMENDED ORDERS (RULE 625).

01. Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. ()

02. Content. Except where otherwise provided by statute or rule, every recommended order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the presiding officer. It will not become final without action of the agency head. If you disagree with this recommended order, you may file a "motion for reconsideration" with the presiding officer, or you may file "exceptions" with the agency head. You are allowed to file both. ()

b. If you would like to file a motion for reconsideration of this recommended order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

c. If another party has filed a motion for reconsideration of this recommended order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it. ()

d. You may also file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. ()

e. If another party has filed exceptions to this recommended order with the agency head, you must file

any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

f. If you would like to request oral argument regarding any motion for reconsideration or exceptions, you must state so in your filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it. ()

03. Content if Reconsideration is Not Permitted or Feasible. Where statute or rule does not permit a motion for reconsideration, or otherwise renders a motion for reconsideration not feasible (e.g., insufficient time), the recommended order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the presiding officer. It will not become final without action of the agency head. If you disagree with this recommended order, you may file “exceptions” with the agency head. Motions for reconsideration filed with the presiding officer will not be considered. ()

b. You may file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within [number of days for which the governing statute or rule would sufficiently allow for submission of exceptions and consideration thereof in advance of a final order, as determined by the presiding officer] days from the service date of this recommended order, unless the agency head sets a different deadline. ()

c. If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within [number of days for which the governing statute or rule would sufficiently allow for submission of responses to exceptions and consideration thereof in advance of a final order, as determined by the presiding officer] days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

d. Oral arguments will not be allowed unless requested by the agency head. ()

04. Service of Recommended Orders. All recommended orders must be served on all parties contemporaneously with the issuance of the recommended order. ()

626. PRELIMINARY ORDERS (RULE 626).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head or the agency head's designee pursuant to Section 67-5245, Idaho Code. ()

02. Content. Except as otherwise provided by statute or rule, every preliminary order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the presiding officer. It can and will become final without further action of the agency, and without any further notice to you, unless any party requests that either the presiding officer or the agency head review it. If no such request is made within fourteen (14) days of the service of this preliminary order, the order will become final, and you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Idaho Code Sections 67-5270 through 67-5279. ()

b. If you disagree with this preliminary order, you may file a “motion for reconsideration” with the presiding officer, or you may file “exceptions” and/or a “petition for review” with the agency head. You are allowed to file all of these. ()

c. If you would like to file a motion for reconsideration of this preliminary order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

d. If another party has filed a motion for reconsideration of this preliminary order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it. ()

e. You may also file any exceptions you may have to this preliminary order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. ()

f. If another party has filed exceptions to this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

g. You may also file a petition for review regarding this preliminary order, with a supporting brief which sets forth the basis for review, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. The agency head may also notify the parties within fourteen (14) days of the service date of this order, that they, by their own choice, are reviewing this preliminary order, which notice will identify the issues the agency head will review. If a motion for reconsideration has been filed with the presiding officer, your petition for review, or the agency head's notice, does not have to be filed until fourteen (14) days after the motion for reconsideration process with the presiding officer is complete. ()

h. If another party has filed a petition for review of this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the petition for review. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

i. If you would like to request oral argument regarding any motion for reconsideration, exceptions, or petition for review, you must state so in your filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it. ()

j. If an agency head reviews a preliminary order, they have the option of either issuing a final order, remanding the matter back to the presiding officer, or holding additional hearings. You will be notified of the agency head's choice if the preliminary order is reviewed. ()

03. Service of Preliminary Orders. All preliminary orders must be served on all parties contemporaneously with the issuance of the preliminary order. ()

627. FINAL ORDERS (RULE 627).

01. Definition. Final orders are preliminary orders that have become final under Rule 626 and Section 67-5245, Idaho Code, or orders issued by the agency head, either as the presiding officer or in regards to a recommended order, pursuant to Section 67-5246, Idaho Code. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter. ()

02. Content. Except as otherwise provided by statute or rule, every final order issued by the agency head must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a final order of the agency. ()

b. If you disagree with this final order, you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Sections 67-5270 through 67-5279, Idaho Code. ()

c. Prior to requesting judicial review of this final order, you may also file a "motion for reconsideration" with the agency head. If you do wish to file a motion for reconsideration, you must do so within fourteen (14) days of the service date of this order. After the agency head receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

d. If another party has filed a motion for reconsideration of this final order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party, and no oral argument, will be permitted unless the agency head, in their discretion, requests it. ()

e. Once an agency head has ruled upon a motion for reconsideration, or if twenty-one (21) days have passed since the motion for reconsideration was filed without a ruling by the agency head, you will have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Sections 67-5270 through 67-5279, Idaho Code. ()

03. Service of Final Orders. ()

a. Parties. Final orders must be served on all parties contemporaneously with the issuance of the final order. ()

b. Presiding officers. Final orders must be served on the presiding officer contemporaneously with the issuance of the final order. ()

c. Non-Parties. Where not otherwise directed by statute or order, final orders should, upon request, be made available for public inspection within a reasonable time after the issuance of the final order. The conspicuous posting of the final order on an agency website, by clearly identifying the action and providing an accessible electronic copy of the final order, shall be deemed to satisfy this requirement. ()

628. ORDERS REGARDING COSTS AND/OR FEES (RULE 628).

01. Scope of Rule. This rule provides procedures for considering requests for costs and/or fees (including attorneys' fees) when an agency has authority to award costs and/or fees under other provisions of law. This rule is not a source of authority for awarding costs and/or fees. ()

02. Filing of Motions for Awards of Costs and/or Fees. Unless otherwise provided by statute, rule, or order: ()

a. Procedure. Upon the issuance of a final order, any party seeking an award of costs and/or fees must file a motion within fourteen (14) days of the service date of the final order. The request must state the basis for which fees or costs may be awarded. Any opposition to the motion must be made within fourteen (14) days. Upon the making of such a motion, the agency head may issue an order upon the motion, or assign resolution of the motion to the presiding officer. Any order regarding a request for an award of costs and/or fees shall be final and subject to judicial review pursuant to Sections 67-5270 through 67-5279, Idaho Code. The filing of any motion for an award of costs and/or fees, and any proceedings thereon, do not extend, alter, or stay any other deadlines in the contested case proceeding. ()

b. Interlocutory requests. Motions for awards of costs and/or fees made prior to the issuance of a final order will not be ruled upon prior to the issuance of the final order, but will instead be deemed filed as of the date of the final order. ()

03. Orders Granting or Denying Costs and/or Fees. Every order granting or denying a request for costs and/or fees must cite the statutes or rules under which the determination of the request for costs and/or fees has been made. ()

629. ORDER NOT DESIGNATED (RULE 629).

If an order is not designated as interlocutory, recommended, preliminary, or final at its release, any party may move to designate the order as interlocutory, recommended, preliminary, or final, as appropriate. ()

630. MODIFICATION OF ORDERS ON PRESIDING OFFICER'S AND AGENCY HEAD'S OWN MOTION (RULE 630).

01. Recommended and Preliminary Orders. A presiding officer issuing a recommended or

preliminary order may modify the recommended or preliminary order on the presiding officer's own motion within fourteen (14) days after issuance by withdrawing the order and issuing an amended recommended or preliminary order. ()

02. Final Orders. The agency head may modify or amend a final order at any time before a petition for judicial review to district court has been filed or before the expiration of the time for the filing of a petition for judicial review to district court, whichever is earlier, by withdrawing the earlier final order and issuing an amended final order. ()

03. Other Orders. A presiding officer may modify or amend any other order issued by them at any time prior to the issuance of a preliminary or recommended order. An agency head may modify or amend any other order issued by them at any time prior to the issuance of a final order. ()

631. CLARIFICATION OF ORDERS (RULE 631).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary, or final. Petitions for clarification from final orders do not suspend or toll the time to file a motion for reconsideration or appeal of the order. A petition for clarification may be combined with a motion for reconsideration or stated in the alternative as a motion for clarification and/or reconsideration. ()

632. STAY OF ORDERS (RULE 632).

Any party or person affected by an order may file a motion to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute or rule. A presiding officer may stay any interlocutory, preliminary, or recommended order on their own motion, and an agency head may stay any final order on their own motion. ()

633. VOIDING OF ORDERS (RULE 633).

01. Notice. Any notice to the Chief Administrative Hearing Officer pursuant to Section 67-5283(2)(b), Idaho Code, regarding the alleged failure of an independent contract hearing officer to comply with the requirements of Section 67-5283(2)(a), must be submitted in writing to, and received by, the Chief Administrative Hearing Officer within thirty (30) days of the issuance of the independent contract hearing officer's order, and should state whether the order involves a financial transaction and whether the noticing party requests a stay of the independent contract hearing officer's order. ()

02. Stay. If the Chief Administrative Hearing Officer determines that the independent contract hearing officer's order involves, or may involve, a financial transaction, the Chief Administrative Officer may promptly issue a stay of the independent contract hearing officer's order for the duration of the investigation, which shall be served on all parties to the contested case. ()

03. Investigation. ()

a. An investigation into an independent contract hearing officer's alleged failure to comply with the requirements of Section 67-5283(2)(a), Idaho Code, may be conducted by either the Chief Administrative Hearing Officer or any person contracted by them to conduct such investigation or a portion thereof. ()

b. The independent contract hearing officer being investigated shall promptly comply with all information and documentation requests made by the Chief Administrative Hearing Officer or their designee related to the alleged failure to comply. ()

04. Determination. Within fourteen (14) days of the notice regarding an alleged failure of an independent contract hearing officer to comply with the requirements of Section 67-5283(2)(a), Idaho Code, the Chief Administrative Hearing Officer shall issue a determination in writing of their findings and conclusions, which shall be served on all parties to the contested case. Upon issuance of a determination, any stay will automatically dissolve. ()

05. Voiding of Order. If the Chief Administrative Hearing Officer's written determination finds a failure to comply has occurred, or where an independent contract hearing officer fails to cooperate in an investigation

as to whether they failed to comply, the Chief Administrative Hearing Officer shall declare the independent contract hearing officer's order void and of no effect. The Chief Administrative Hearing Officer's investigation, determination, and voiding of an order pursuant to Section 67-5283(2)(b), Idaho Code, does not constitute a contested case proceeding under the APA, and is not an appealable agency order. ()

06. Reassignment. If the Chief Administrative Hearing Officer's written determination finds a failure to comply has occurred, the Chief Administrative Hearing Officer shall promptly reassign the contested case to another hearing officer for completion of the contested case. ()

634. – 649. (RESERVED)

Rules 650 through 699 – Judicial Review

650. JUDICIAL REVIEW, GENERALLY (RULE 650).

Sections 67-5270 through 67-5279, Idaho Code, and the rules of civil procedure govern who may petition for judicial review of a final agency order to district court, where and when such an appeal must be filed, and how the judicial review process will be conducted. ()

651. PETITION FOR JUDICIAL REVIEW (RULE 651).

A petition for judicial review filed by any party must be filed with the agency and with the district court, and must be served on all parties and the presiding officer. ()

652. – 699. (RESERVED)

SUBCHAPTER H – SPECIAL PROCEEDINGS (RULES 700-799)

Rules 700-724 – Intervention

700. INTERVENTION GENERALLY (RULE 700).

Persons who are not parties to a proceeding but who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. Where an agency participates in the hearing in a neutral capacity, the agency may petition to intervene to become a party. ()

701. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 701).

Petitions to intervene must comply with all rules governing form of pleadings. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. The petition must also include a proof of service reflecting service upon all existing parties to the proceeding. ()

702. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 702).

Petitions to intervene must be filed at least twenty-one (21) days before the date set for hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption or prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

703. OPPOSITION TO PETITIONS TO INTERVENE (RULE 703).

No petition to intervene will be ruled upon by a presiding officer earlier than fourteen (14) days after its filing, except during or after a hearing in which any party may be heard. Any party opposing a petition to intervene must file an objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and the proposed intervenor(s). ()

704. HEARING ON PETITIONS TO INTERVENE (RULE 704).

Where necessary to develop a full record on the question of intervention, the presiding officer shall conduct a hearing on the petition to determine whether intervention will be permitted and to define the scope of intervention and any limitations thereon. All parties to the proceeding will be permitted to participate in such a hearing, and will be permitted to offer testimony and exhibits. ()

705. ORDERS ON PETITIONS TO INTERVENE (RULE 705).

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and does not unduly delay or prejudice the original parties, the presiding officer will grant intervention, unless the petitioner's interest is already adequately represented by one or more parties already participating in the case. The order granting intervention may be subject to reasonable conditions as determined by the presiding officer, including limiting the factual or legal issues the intervenor may raise and/or the means an intervenor may use to present and develop those issues, so as to avoid undue delay or prejudice to the original parties. If it otherwise appears that an intervenor has no direct or substantial interest in the proceeding, or that intervention would unduly broaden the issues, or unduly delay or prejudice the original parties, the presiding officer may deny the petition. ()

706. DENIAL OF INTERVENTION DOES NOT PRECLUDE PARTICIPATION (RULE 706).

A person whose petition for intervention is denied may still, subject to these rules and the discretion of the presiding officer, participate in the proceeding as an interested person or a public witness. ()

707. – 724. (RESERVED)

Rules 725-749 – Declaratory Rulings

725. FORM AND CONTENTS OF PETITIONS FOR DECLARATORY RULINGS (RULE 725).

A petition for declaratory ruling on the applicability of a statute, a rule administered by an agency, or an order issued by an agency is a pleading which initiates a declaratory proceeding. The form and content of a petition for declaratory ruling must substantially comply with this rule, as determined by the presiding officer. ()

01. Form. Petitions for declaratory rulings must comply with all rules governing form of pleadings. ()

02. Content. Petitions for declaratory rulings shall: ()

a. Identify the petitioner and state the petitioner's interest in the matter; ()

b. State the declaratory ruling the petitioner seeks; and ()

c. Indicate the statute, order, or rule for which a declaratory ruling is requested, and the factual allegations which support the petitioner's request. ()

03. Legal Assertions. Legal assertions in the petition may be accompanied by citations to caselaw, statutes, or other authority. ()

726. SERVICE AND NOTICE OF PETITION FOR DECLARATORY RULING (RULE 726).

At a minimum, the petitioner must serve a copy of their petition on any person the petitioner knows would be affected by the declaratory relief sought. Further, notice of a petition for declaratory ruling should also be made by the petitioner in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. The presiding officer may direct the petitioner and/or the agency to make, or attempt to make, notice or service to potentially interested persons if those potentially interested persons have not previously been notified of, or served with, the petition. ()

727. PROCEEDINGS (RULE 727).

01. Determination Of Need For Hearing. The presiding officer shall have thirty (30) days to determine if a hearing on the petition for declaratory ruling is needed. ()

02. No Hearing Needed. If the presiding officer determines that a decision can be rendered on the face of the petition without hearing or further proceedings, the presiding officer shall thereafter render, as soon as practicable, a preliminary or recommended order reflecting the determination that no hearing is needed and the reasons therefor, and the declaratory ruling. If the presiding officer is an agency head, the order reflecting the

determination that no hearing is needed and the reasons therefor, and declaratory ruling, shall issue as a final order. ()

03. Hearing Needed. If a presiding officer determines that a hearing is needed, the petitioner, the agency, and any other interested persons shall be notified, and a hearing upon the petition shall be held as soon as practicable. A declaratory hearing shall be conducted utilizing the contested case proceeding rules herein, and a preliminary or recommended order setting forth the declaratory ruling shall be issued as soon as practicable after the hearing. If the presiding officer is an agency head, the order reflecting the declaratory ruling shall issue as a final order. ()

728. SPEEDY HEARING PERMITTED (RULE 728).

Parties may request, or a presiding officer may order sua sponte, a speedy hearing on a petition for declaratory ruling. In evaluating the need or request for a speedy hearing, a presiding officer should weigh both factors favoring speedy hearing, such as an imminent deadline facing petitioner, and factors disfavoring speedy hearing, such as impairment to notice and/or due process. ()

729. LIMITATIONS (RULE 729).

01. Contested Cases. ()

a. Petitions for declaratory rulings, or other requests for declaratory relief, are not permitted where the requested declaratory relief addresses the same subject matter or issues of an existing contested case. ()

b. Further, in responding to a petition for declaratory relief, an agency may make motion to the presiding officer to dismiss the declaratory proceeding upon a showing that the agency has initiated a contested case to address the same subject matter or issues of the declaratory action. ()

02. No Limitation On Other Agency Action. The provisions of these rules regarding petitions for declaratory rulings shall not be construed in any way to preclude: ()

a. Any person from requesting an agency to informally interpret a pertinent statute, rule, or order in the routine course of agency business, whether such request is made in-person, by mail, by e-mail, or by telephone; ()

b. An agency from providing an informal interpretation in response to any such request; or ()

c. An agency from issuing any agency guidance of any kind, as defined in Section 67-5250, Idaho Code. ()

730. – 749. (RESERVED)

Rules 750-799 – Emergency Proceedings

750. SERVICE OF EMERGENCY ORDER (RULE 750).

Orders issued as the result of an emergency proceeding under Section 67-5247, Idaho Code, shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. ()

751. HEARING ON EMERGENCY ORDER (RULE 751).

01. Time for Hearing. The hearing upon an emergency order shall be held no later than twenty-eight (28) days after the issuance of the emergency order, except as otherwise provided by statute, rule, or order. ()

02. Appointment of Presiding Officer. No later than three (3) days after the issuance of the emergency order, the agency shall assign the matter to the Office of Administrative Hearings, or, where otherwise authorized by statute or rule, appoint a presiding officer. ()

03. Notice of Proposed Hearing. As quickly as feasible, the presiding officer shall issue a notice of proposed hearing date. ()

a. Service. The notice of hearing shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. The agency may be served by e-mail or regular mail. ()

b. Content. Except as otherwise provided by statute or rule, the notice of proposed hearing date must contain the following paragraphs or substantially similar paragraphs: ()

i. You have a right to have an evidentiary hearing before the agency as quickly as feasible if you wish to contest the Emergency Order dated [insert date of order]. Any hearing will be conducted as a contested case hearing pursuant to Chapter 52, Title 67 of the Idaho Code. ()

ii. Pursuant to Section 67-5252, Idaho Code, the presiding officer shall, at the time of hearing: ()

(1) Regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary, and ()

(2) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or a prehearing order. ()

iii. The hearing date identified in this notice is a proposed hearing date. If you would like to request a different date, you may contact the presiding officer identified in this notice within seven (7) days of receiving this notice. You may contact the presiding officer to make your request by phone, e-mail, or by formal filing with the presiding officer. If you do not timely request a different date, the hearing will be held on the date proposed in this notice. ()

04. Request for Alternative Hearing Date. Within seven (7) days of receipt of the notice of proposed hearing, any party can request an alternative hearing date, for a date sooner or later than proposed. Such request may be made to the presiding officer informally, via e-mail or telephone. The presiding officer shall hold a conference as soon as practicable with all parties to select a new date. ()

05. Regular Proceedings Permitted. Although the hearing upon an emergency order shall be treated as an appeal of an agency order, any party participating therein shall be entitled to any discovery, presentation of evidence, or other contested case activities as would have been afforded as if the emergency order had not been issued. ()

06. Stay. Motions requesting stay of the emergency order are permitted; however, no stay may be granted by the presiding officer except upon stipulation by the agency to the stay and any terms governing the stay. ()

752. – 799. (RESERVED)

SUBCHAPTER I – AGENCY-SPECIFIC RULES (RULES 800-899)
Rules 800 Through 809 Agency-Specific Contested Case Rules

800. OTHER AGENCY-SPECIFIC CONTESTED CASE RULES (RULE 800).

01. Mandatory Application. Some agencies have promulgated their own contested case rules to comply with applicable federal law or specific requirements of Idaho law applicable to the agency or programs it administers. The presiding officer shall adopt and apply any such agency-specific rules, including temporary rules. Agency-specific rules which were promulgated as alternative procedures to the prior Idaho Rules of Administrative Procedure of the Attorney General shall continue to be adopted and applied, except as may conflict with any of these Idaho Rules of Administrative Procedure. Previously-promulgated alternative procedures which conflict with these Idaho Rules of Administrative Procedure, but which are otherwise mandated by federal or state statute, rule,

regulation, or binding state or federal judicial decisional authority, shall be adopted and applied notwithstanding these Idaho Rules of Administrative Procedure. ()

02. Optional Application. Agency-specific contested case procedures may also be reflected in agency policies, procedures, or other non-rule guidance. Upon request of the agency no later than the initial scheduling conference, the presiding officer may adopt and apply such agency-specific policies, procedures, or other non-rule guidance, provided that such policies, procedures, or other non-rule guidance are publicly-available pursuant to Section 67-5250, Idaho Code; however, any such policies, procedures, or non-rule guidance which are required to comply with applicable federal law shall be adopted and applied. ()

801. – 899. (RESERVED)